No. 87

In the Supreme Court of the United States

OCTOBER TERM, 1952

UNITED STATES OF AMERICA, PETITIONER

v.

EDWARD A. RUMELY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinions in the Court of Appeals (R. 193-224) are reported at 197 F. 2d 166.

JURISDICTION

The judgment of the Court of Appeals was entered April 29, 1952 (R. 224-225). The petition for a writ of certiorari was filed on May 28, 1952, and was granted on October 13, 1952 (R. 227). The jurisdiction of this Court rests on 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether information sought by the House Select Committee on Lobbying Activities as to the names of those who gave sums of over $500 to the Committee for Constitutional Government, Inc., an organization registered under the Lobbying Act, for the purchase or distribution of books of that organization, was pertinent to an inquiry by the Committee into organized efforts to influence public opinion in regard to federal legislation.

2. Assuming that the information sought was otherwise pertinent to the inquiry, whether the House of Representatives had constitutional power to authorize its Committee to make such an inquiry and to compel the disclosure of the information sought.

STATUTES INVOLVED

R. S. 102, as amended, 52 Stat. 942, 2 U.S.C. 192 provides:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, * * * or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

The provisions of the Federal Regulation of Lobbying Act of August 2, 1946, 60 Stat. 839, 2 U.S.C. 261, *et seq.*, are set forth in Appendix A, *infra*, pp. 82-89.

STATEMENT

A. *The Trial.*—Respondent was convicted on counts one, six, and seven of an indictment charging wilful refusal to produce records and give testimony before the Select Committee on Lobbying Activities of the House of Representatives, in violation of R. S. 102, 2 U.S.C. 192 (R. 2-4, 181). The Committee had been created by resolution of the House of Representatives (H. Res. 298, 81st Cong., 1st sess., Gov. Ex. 2, R. 18, 188), authorizing it to conduct a study and investigation, *inter alia*, of "all lobbying activities intended to influence, encourage, promote or retard legislation."[1]

Count one charged that respondent wilfully refused to produce records, duly subpoenaed, of the Committee for Constitutional Government, Inc. (CCG), showing the name and address of each person from whom a total of $1,000 or more had been received by the Committee from January 1, 1947, to May 1, 1950, for any purpose, including receipts from the sale of books and pamphlets. Count six charged a similar offense as to a subpoena calling for the names and addresses of those from whom the Committee on Constitutional Government had received $500 or more, and count

[1] The full text of the Resolution is reprinted at R. 188.

seven charged wilful refusal to give the name of a woman from Toledo who gave $2,000 for distribution of a book called *The Road Ahead*. (R. 2-4.)

At the trial, the Government proved that the Committee for Constitutional Government and respondent as agent therefor had registered under the Lobbying Act after its enactment in 1946 (R. 15-17), such registration subsequently being shown to have been under protest (R. 23). It introduced in evidence the House Resolution creating the Select Committee (Gov. Ex. 2, R. 18) and the certification by the Speaker of the House of the Committee's Report citing respondent for contempt (Gov. Ex. 4, R. 19). It proved the issuance of the subpoenas and the refusal of respondent to answer, through the testimony of counsel for the Select Committee (R. 20-35) during the course of which reference was made to two printed volumes of the hearings before the Select Committee which were stipulated by counsel for respondent to be correct (R. 21).[2]

Respondent took the stand and introduced into evidence, as bearing on the subject of ability to

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[2] "Mr HITZ [Government Counsel]: I may say, Your Honor, that for the purposes of this trial it has been agreed between Mr. Burkinshaw and myself that the two volumes, Part 4 and Part 5 of the hearings, insofar as they relate to Mr. Rumely, are correct and we will not go to the reporter or to any shorthand notes for that purpose. Is that right?

"Mr. BURKINSHAW [Counsel for Rumely]: That is right, absolutely."

comply with the subpoena,[3] a statement he had made before the Committee showing the efforts that had been made to comply with the subpoena and the extent of financial data furnished (R. 111-113). He testified that CCG furnished the Select Committee with all the information it sought except the names of the purchasers of books (R. 140-141).

The trial court ruled as a matter of law that the Select Committee was a validly constituted committee of Congress, and that the records and information requested, as called for in the counts of the indictment under consideration, were pertinent to the inquiry (R. 175). The issue of willful refusal was submitted to the jury (R. 176-178). Upon respondent's conviction, he was sentenced to pay a fine of $1,000 and to imprisonment for six months, with execution of the prison sentence suspended and respondent placed on probation (R. 10).

B. *The Committee Report.*—The background of the subpoenas and of the questions asked respondent is set forth in full in a Report of the Select Committee (H. Rep. 3024, 81st Cong., 2d sess.). This Report was certified to the United States Attorney for the District of Columbia pursuant to a resolution of the House of Representatives, in accordance with the provisions of Section 104 of

[3] Respondent offered to show that his refusal to answer was in good faith (R. 84-85), but the court had previously ruled that good faith, in the sense of motive, was immaterial, the issue being whether respondent's refusal was willful (R. 73-77). The court allowed respondent to testify to facts showing physical impossibility to comply with the subpoenas (R. 97).

the Revised Statutes as amended, 2 U.S.C. 194; Gov. Ex. 4, R. 19.

According to that Report, the Committee for Constitutional Government, Inc., and respondent, its executive secretary, have been registered as lobbyists since October 7, 1946,[4] and CCG reported spending approximately $2,000,000 during that period. One of the chief functions of CCG was the distribution of books and pamphlets presenting one side of national legislative issues (Rep. p. 1). The Report states (p. 2):

> The distribution of printed material to influence legislation indirectly * * * is the basic function of the Committee for Constitutional Government.

The Report also records that after enactment of the Lobbying Act the Committee for Constitutional Government adopted a policy of accepting payments of over $490 only if the contributor specified that the funds be used for the distribution of one or more of its books and pamphlets. It then applied the term "sale" to such receipts and did not report them as contributions under the Lobbying Act (H. Rep. pp. 1-2). The Lobbying Act requires disclosure of contributions of $500 or more. Section 305, 2 U.S.C. 264; *infra*, pp. 84-85.

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[4] This registration, pursuant to the Federal Regulation of Lobbying Act (60 Stat. 839, 2 U.S.C. 261-270), was independently proved at the trial (R. 14-17). Respondent showed that his registration was under protest (Defendant's Exhibits 1-6, R. 124-130).

The Report also shows that, when respondent appeared pursuant to the subpoenas referred to in the indictment he repeatedly stated that, while he would give the total income received from the sale of books and records of loans except those used for the promotion of two books (Rep. pp. 7, 8, 10, 16), he would not supply information as to the identity of purchasers of books and pamphlets (Rep. pp. 7, 8, 9, 10, 12, 14, 15, 16, 17). He maintained that none of the books or pamphlets of the Committee for Constitutional Government dealt with specific legislation (Rep. pp. 9-10, 14 (although he admitted that, when the Taft-Hartley Act was under discussion, the Committee published and distributed a book called "Labor Monopolies or Freedom," of which all members of Congress received a copy (Rep. p. 11). He testified that about 90 per cent of the purchasers shipped the books themselves, but testified that others designated types of individuals, such as "farm leaders" as recipients (Rep. p. 12). He gave as an example the case of one donor who paid to send to 15,550 libraries a book called *Compulsory Medical Care*. He said he was holding back distribution while he was "looking around now for another donor to send a copy to 15,000 editors, because we wish that book to hit the editors on the same day that the library gets it, because the editor may be moved to say something about it, and build up interest in it." (Rep. pp. 12-13). He testified that a woman from Toledo gave him $2,000 for distribution of a

book called *The Road Ahead*, but he refused to furnish her name (Rep. p. 12).[5]

The Report states (pp. 2-3):

> Because of the refusal of the Committee for Constitutional Government, Inc., to produce pertinent financial records, this committee was unable to determine whether or not the Committee for Constitutional Government, Inc., is evading or violating the letter or the spirit of the Federal Regulation of Lobbying Act by the establishment of [a] class [of] contributions called "Receipts from the sale of books and literature", or whether they are complying with a law which requires amendments to strengthen it.
>
> The policy of the Committee for Constitutional Government, Inc., of refusing to accept contributions of more than $490 unless earmarked for books, etc., may also involve: (1) Dividing large contributions into installments of $490 or less, and causing the records of the Committee for Constitutional Government to reflect receipt of each installment on a different date, and/or causing the records of the Committee for Constitutional Government to give credit, for the several installments, to various relatives and associates of the actual contributor. (2) Causing the Committee for Constitutional Government's records as to "Contributions" to reflect less than the total amount of contributions actually received, by

[5] This refusal forms the basis of count 7.

labeling some part of such funds as payments made for printed matter.

Because of the refusal of the Committee for Constitutional Government, Inc., to produce pertinent financial records, this committee was unable to determine whether or not the Federal Regulation of Lobbying Act requires amendment to prevent division of large contributions into installments, or to prevent the crediting of contributions to others than the real contributor, or to prevent the use of other subterfuges.

C. *The Decision Below.*—On appeal, the judgment of conviction was reversed (R. 224-225) by a divided court, on the ground that the Select Committee had no authority to compel production of the information which respondent refused to furnish. The majority of the court ruled that Congress "has no power in respect to efforts to influence public opinion" (R. 202), and hence that the term "lobbying activities," as used in the House Resolution creating the Select Committee, must be held to mean lobbying in the sense of direct contact with Congressmen, and "did not purport to convey power to investigate efforts to influence public opinion" (R. 205). Accordingly, the court ruled (R. 205)—

> We are of the opinion that the demand made upon appellant for the names of purchasers of books from his concern was outside the terms of the authority of the Buchanan Com-

mittee, since the public sale of books and documents is not "lobbying."

The court also held that there was no issue in the case as to whether the information was sought to ascertain possible subterfuges to evade the Lobbying Act, because no consideration was given to other financial records admittedly produced by respondent. It thought such other data would have to be considered in determining whether the names of purchasers would be relevant on the issue of subterfuge. (R. 199-200.)

The dissenting judge was of the view that both the Report citing respondent and the fuller hearings before the Select Committee established the pertinency of the information sought (R. 210-215). He rejected the basic premise of the majority opinion that indirect lobbying was not within the scope of the Select Committee, pointing out that any "concept of 'lobbying activities' which ignores the realism of the day is an archaic one" (R. 217). The dissenting opinion states (R. 218):

> Congress, through the Buchanan Committee, was concerned with a perennial problem in our democracy—how to deal with highly organized pressure groups, and the distortions and evils they sometimes bring in their wake, and how to distinguish such groups from individual citizens petitioning their representatives. Neither direct nor indirect lobbying is an evil and a danger, but either can become so, if plainly or subtly dishonest methods are used to distort the legislative function. * * *

I reject the notion that because Congress may not constitutionally *prohibit* indirect lobbying activities, it is without power to provide any measure of protection for itself and the public from its abuse. And here, since the Buchanan Committee had strong reason to believe that the abuse had already arisen, the attending circumstances were clearly pertinent to its inquiry. * * *

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the information sought from respondent by the House Select Committee on Lobbying Activities was not pertinent to the inquiry being conducted by that Select Committee.

2. In holding that the House Select Committee on Lobbying Activities was not authorized by Resolution 298 to inquire into organized efforts by groups or entities like the Committee for Constitutional Government to influence public opinion in regard to federal legislation.

3. In holding that respondent was not required to supply the information called for by the Select Committee.

4. In holding that the pertinency of the information sought from respondent by the Select Committee must be determined solely on the basis of evidence formally introduced and admitted by the District Court.

5. In failing to hold that the House of Representatives had constitutional power to authorize

the Select Committee to inquire into organize efforts by groups or entities like the Committee fo Constitutional Government to influence publi opinion in regard to federal legislation.

6. In failing to hold that the House of Repre sentatives had constitutional power to authoriz the Select Committee to demand the information sought from respondent.

7. In reversing the respondent's conviction and ordering the indictment dismissed.

SUMMARY OF ARGUMENT

I

Congress may unquestionably investigate in aid of its legislative powers. *McGrain* v. *Daugherty*, 273 U.S. 135, 170-176; *Sinclair* v. *United States*, 279 U.S. 263, 291-294. As with most investigations, the inquiry may have a broader reach than the substantive power which Congress may or can exert, so that Congress can have full opportunity to determine the advisability and need for legislation. Cf. *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186. Congress has also been held empowered to investigate the election and conduct of its members, and the influences brought to bear upon them. E.g., *In re Chapman*, 166 U.S. 661.

Special constitutional or evidentiary privileges aside, the witness cannot claim immunity from responding to a demand pertinent to a lawful Congressional inquiry on the ground that it relates to private matters. If he refuses to respond, he is guilty of a violation of R. S. 102 (*supra*, p. 2);

if the Committee's demand was "pertinent", and may be punished accordingly. In the criminal proceeding, "pertinency" is determined by the trial judge as one of law, and a deliberate, intentional refusal to respond is sufficient for conviction, whatever the witness' motive or "good faith". *Sinclair* v. *United States*, *supra*, at pp. 298-9, 299.

II

The information sought from respondent by the Select Committee was "pertinent" to its inquiry (constitutional questions aside).

A. The Committee had been authorized by the House of Representatives (in Resolution 298) to "conduct a study and investigation of (1) all lobbying activities intended to influence, encourage, promote, or retard legislation; and (2) all activities of agencies of the Federal Government intended to influence, encourage, promote, or retard legislation" (R. 188). On its face, this was a broad authorization and would seem plainly to have made pertinent inquiry into the major sources of the finances of all lobbyists registered under the Federal Regulation of Lobbying Act, which covers direct or indirect influences on the passage or defeat of federal legislation. *Infra*, pp. 85-88. The immediate legislative history of the enabling resolution (Resolution 298) likewise affirmatively indicates the broad purpose to probe not only the direct button-holing of legislators but also into deliberate organized influencing of "public opinion" with respect to federal matters.

B. The propriety of this construction of Resolu-

tion 298 is underlined by the history of past Congressional inquiries into "lobbying". This was the fourth great investigation of lobbying since 1913. From the first of these, the Committees have noted that significant dangers from lobbying grow out of indirect activities, out of the artificial creation of "public opinion." And although each of the earlier investigations resulted from what Congress regarded as particularly glaring incidents of lobby abuse, and lost momentum as each incident faded from public attention, there was nonetheless consistent recognition from each inquiring committee that the dimensions of the "lobby problem" were vague as well as large, and included indirect influencing. H. Rep. 113, 63rd Cong., 2d Sess., printed in 51 Cong. Rec. 565-584. See S. Rep. 43, pts. 4, 5, 7, 71st Cong., 1st Sess.; Hearings, Special Senate Committee to Investigate Lobbying Activities, 74th Cong., 1st and 2nd Sess., 75th Cong., 3rd Sess., pp. 1014-1015. See Lane, *Some Lessons from Past Congressional Investigations of Lobbying*, 14 Pub. Op. Quar. 14 (1950).

Indirect lobbying was also recognized as a phase of the problem of good representative government in other public investigations. Aspects of it were dealt with in 1938 by the Civil Liberties Committee of the Senate Committee on Education. S. Rep. 6, 76th Cong., 1st Sess. One of the monographs of the Temporary National Economic Committee, an investigation into concentrated economic power, dealt generally with the indirect political pressures exerted by the groups it was investigating. Mono-

graph No. 26, "Economic Power & Political Pressures." The Report of the President's Committee on Civil Rights (1947), pp. 52-53, called attention to the need of controlling, at least by publicity, those who were "active in the market place of public opinion."

Finally, the Federal Lobbying Act of 1946 is particularly important in understanding the legislative background of the present investigation. It represented the first federal statute to deal squarely with lobbying, and it was broad in scope. The Select Committee was undoubtedly to investigate its operation. But of equal importance is the fact that the Lobbying Act was part of the Legislative Reorganization Act of 1946, which attempted in a number of ways to advance the legislative process by improving the presentation to, and consideration by, Congress of facts and opinions.

C. In carrying on its inquiry under the House Resolution, the Select Committee construed its authority broadly, as its terms and background warranted. The Committee heard testimony which, independently, indicated to it that the problem it was investigating was of large proportions. It was told that the button-holing-of-Congressmen approach to lobbying was no longer its most important aspect. Dollarwise, at least, by far the greater part of efforts to influence legislation were said to be indirect efforts to "make" public opinion, which, in turn, would result in the necessary support for legislation. The Committee was told also that the processes of public opinion formation made

it peculiarly susceptible and responsive to these organized pressures.

Witnesses told the Select Committee of various facts which appeared to show that legislative opinion "manufacturers" were having some effect, although the scope of the effect was difficult to measure. It was told, for instance, that there was evidence of a marked discrepancy between opinion as reflected by Congressional mail, and as it was reflected by impartially administered public opinion polls. Other evidence indicating the artificial creation of supposed blocs of opinion was brought to its attention. The Select Committee also concluded, on the basis of its hearings, that the mere sums of money being spent for the purpose of influencing legislation raised questions as to whether these efforts were not successful in distorting the appearance of "public opinion" to Congress.

On the other hand, the Select Committee also considered testimony that the so-called "indirect lobbying" groups had very valuable positive functions to perform; that they served to balance the arbitrarily geographical representation in Congress, and served importantly as sources of information for Congress on public issues.

With this general survey as background, the Select Committee then undertook to study its problem more specifically, by inquiry into particular lobbies, drawn to represent variant political outlooks and organizational techniques. In the course of this study, the Select Committee came to the Committee for Constitutional Government, which ac-

cording to the Select Committee's information, expended considerable sums. In investigating CCG's methods of influencing public opinion, and particularly its response to the 1946 Lobbying Act, the Select Committee inquired about those who were spending large sums to support its work.

D. In this context—including the words of Resolution 298 and its immediate legislative history, the scope of previous inquiries into "lobbying", the Select Committee's own understanding of its mission, and the particular evidence presented to it—it is undeniable that the Committee was empowered to probe into indirect lobbying, and in that connection to consider the operation of the Regulation of Lobbying Act of 1946.

In that type of inquiry, the demands for the information here at issue were clearly pertinent, on any theory. If consideration be restricted to the fact that respondent and CCG had registered under the Lobbying Act, it is plain that the Committee was entitled to know if they had sought to evade the statutory requirements by classing "contributions" as "purchases", and whether CCG's activities revealed need for the Act's amendment, one way or another. But the Court may consider, in addition to the fact of registration, the data and details on respondent and CCG, bearing on possible evasion of the Lobbying Act and need for further legislation, which are contained in the Committee's Report Citing Edward A. Rumely, and in its hearings. Though not formally introduced into evidence, these materials were before the trial

judge, and may well have been considered by him. In any case, this Court can weigh them since "pertinency" is a matter of law for the judge, not the jury, and no prejudice to respondent can possibly result. These documents reveal, in elaborate and precise detail, the relevancy of the demands made by the Committee—particularly in showing that CCG may have attempted to evade the Lobbying Act's requirement to report all contributions of over $500 by characterizing contributions of those amounts as mere "purchases."

III

The Court of Appeals erroneously thought that the Select Committee's demands infringed the First Amendment and therefore could not possibly be pertinent to any lawful inquiry. In our view, the inquiry was within Congress' general competence, and the First Amendment interposes no bar.

A. The Committee certainly had general legislative jurisdiction if any valid legislation could stem from its inquiry. There is no doubt that it could recommend legislation which would, the First Amendment apart, be within its competence to control its own activities or would be sanctioned by the commerce or postal powers. For instance, it could consider and recommend some type of disclosure legislation, a type of regulation which has been frequently used to safeguard a public interest. *E.g., Burroughs and Cannon* v. *United States*, 290 U.S. 534, 545 (Corrupt Practices Act); *Electric Bond & Share Co.* v. *Securities & Exchange Com-*

mission, 303 U.S. 419, 439 (utility regulation); *New York ex rel. Bryant* v. *Zimmerman*, 278 U.S. 63, 72-77 (Ku Klux Klan); the Regulation of Lobbying Act of 1946. Unless it could be said, definitively and *a priori*, that Congress is wholly foreclosed by the First Amendment from using this device, in any form, with respect to CCG and its supporters, the Committee was plainly acting in aid of a legislative function. Conversely, if there was a possibility of valid legislation issuing from the Committee, it is wholly irrelevant that unconstitutional legislation might actually be recommended or adopted.[6]

B. There is no interference with First Amendment rights, either in disclosure legislation which the Select Committee could recommend or in its demands upon respondent. Disclosure of the names of CCG's larger purchasers—either as a result of legislation or in the course of inquiry—imposes no *legal* sanctions of any kind on the expression of ideas by anyone. Nor does respondent claim that it does. His concern is that disclosure of these facts will lead to an unfavorable public reaction which will deter CCG's supporters from continuing as "purchasers."

1. This may, indeed, be an actual "restraint," but it is not an abridgment of First Amendment rights. Self-censorship or self-restraint in expression of ideas, stemming from but going beyond

[6] We also submit that Congress' power over its own operations and to inform the public would also support the Committee's inquiry, even if there were no legislative purpose.

a legal requirement (*e.g.*, the slander and libel laws), is a common result of timidity, caution, care, or the desire to avoid controversy or litigation, but this type of voluntary, tangential restraint has never been thought within the First Amendment, even where it flows from fear of a statutory penalty or other legal sanction. *A fortiori*, there is no abridgment here where the feared sanction is concededly not legal at all, but social or economic pressure consequent upon disclosure of true facts. At least where disclosure serves a legitimate purpose, it cannot invade First Amendment rights.

2. Whatever its wisdom as a legislative policy, there can be no denial that compulsory disclosure relating to organized groups seeking to influence federal legislation could advance legitimate public interests, as Congress would see them. For forty years, Congress has been concerned with the relationship between (a) fact-finding and opinion-finding, as bearing on the legislative process, and (b) the groups and organizations which seek to influence Congressional action, directly or through the molding of public opinion. Congress' own studies, and those of other responsible students, have indicated that there is at least reasonable basis for the belief that Congress' functioning has been impaired by lack of knowledge of the character, sponsorship, and activities of these groups and organizations. Disclosure, it is thought, will aid the reaching of wiser judgments on federal legislation by helping Congress and the electorate to evaluate the facts and arguments pressed on

Congress and to appraise the true scope of the blocs of opinion said to support or oppose a particular bill or project. The aim of most disclosure proposals, which has not been to silence or prohibit ideas but to understand their sponsorship, is consonant with, rather than contrary to, the First Amendment.

3. The same conclusion is reached if the self-restraint consequent upon disclosure is viewed as a legal, rather than a social or voluntary, restraint. The restraint is, at most, a minor and limited one. On the other hand, the public purpose to be served by disclosure—betterment of the legislative process—must be characterized as fundamental and important. Any fair balance would cause the public interest to outweigh the private, by far. *Cf. Pennekamp* v. *Florida*, 328 U.S. 331, 336; *United Public Workers* v. *Mitchell*, 330 U.S. 75, 94-103; *Prince* v. *Massachusetts*, 321 U.S. 158, 160-170.

4. Even if it be assumed, contrary to our view, that any disclosure *legislation* would probably invade First Amendment rights, the Select Committee's *ad hoc* demand for disclosure would be valid. A committee has power to elicit all the relevant facts in order to determine the need or possibility of constitutional legislation. If, as here, it acts in good faith, it can proceed to find out all the facts, at least until the facts conclusively demonstrate the unlikelihood or impossibility that a valid statute could be enacted.

C. There is no interference with any protected "right of privacy" under the Fifth Amendment,

either in disclosure legislation applicable to active vendors "in the market place of public opinion", or in the Committee's demand that respondent supply the information it requested.

ARGUMENT

I

Introduction:—The General Scope of the Congressional Power of Inquiry

1. The power of either branch of Congress to institute investigations and to compel testimony with a view to the possible exercise of the legislative function is now indisputable. *United States* v. *Norris*, 300 U. S. 564, 575; *Sinclair* v. *United States*, 279 U.S. 263, 291-294; *McGrain* v. *Daugherty*, 273 U.S. 135, 170-176; *Marshall* v. *Gordon*, 243 U.S. 521, 533-545; *Jurney* v. *MacCracken*, 294 U.S. 125, 144; *Tenney* v. *Brandhove*, 341 U.S. 367, 377.[7] The need for the power stems from the very nature of the legislative process, and the need has increased in proportion to the expanding scope and complexity of the federal government's functions. As this Court said in the *McGrain* case, 273 U.S. at 175:

> A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the

[7] *Kilbourn* v. *Thompson*, 103 U.S. 168, held that the resolution authorizing the investigation there involved contained no suggestion of contemplated legislation; that the matter was one in respect to which no valid legislation could be had; and that the House of Representatives was seeking to exercise judicial rather than legislative power. See 273 U.S., at 170-1.

> legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed.

This power of inquiry enables Congress to elicit the facts bearing on all the subjects within its competence under the Constitution. It is not restricted to inquiring into those facts which prove the need for new legislation, or modification of existing legislation, nor is it limited to the precise area which Congress has authority to regulate or prohibit. *Cf. United States* v. *Josephson*, 165 F. 2d 82, 90-91 (C.A. 2), certiorari denied, 333 U.S. 838; *Townsend* v. *United States*, 95 F. 2d. 352, 361 (C.A.D.C.), certiorari denied, 303 U.S. 664. The power to investigate is almost always broader than the substantive power which may or will be exerted by the investigating agency, for not until the whole region of facts has been canvassed can it be determined where the definitive boundaries of regulation should be drawn. *Cf. Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186; *Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501; Morgan, *Congressional Investigations and Judicial Review: Kilbourn* v. *Thompson Revisited* (1949), 37 Calif. L. Rev. 556, 561-5. It is just as important for Congress to be informed of facts which would show proposed or

possible legislation to be undesirable or unnecessary as it is for it to know the circumstances calling for affirmative action on its part. In many circumstances, such as in areas impinging on freedom of speech or involving interstate commerce, Congress' power to legislate may even depend upon the existence or non-existence of facts which can be shown only through a legislative inquest. Congress, for instance, cannot tell whether there is need or constitutional basis for regulating "propaganda" or pressure on legislators until it learns what are the scope, intent, and effect of the activities thought to form "propaganda" or pressure. Once those facts are known, but not before, the extent and terms of legislation which is both desirable and constitutional can be properly decided.

2. Apart from the power of inquiry incident to its status as the national legislature, Congress also has a special interest in its own operations, and may use the power of inquiry (and compelled testimony) to investigate the election and conduct of its members, and the influences brought to bear on them. *Anderson* v. *Dunn*, 6 Wheat. 204 (attempted bribery of legislator); *In re Chapman*, 166 U.S. 661 (charges of corruption and improper conduct on part of Senators); *Barry* v. *United States ex rel. Cunningham*, 279 U.S. 597, 613-615, 619 (alleged expenditures, promises, etc., made to influence nomination of a candidate for Senator); *Reed* v. *County Commissioner*, 277 U.S. 376, 388 (the same); *United States* v. *Norris*, 300 U.S. 564, 573 (campaign expenditures of candidates for the Senate). Here, too, the power of inquiry is plenary

so that Congress can, if it desires, distinguish improper or dubious influences from those which are praiseworthy or proper.[8]

3. Aside from special constitutional or evidentiary privileges, a witness before a Congressional committee must respond to all demands pertinent to any inquiry within Congressional jurisdiction. He may, it is true, refuse to answer inquiries which are *solely* a delving into "personal and private affairs" (*Kilbourn* v. *Thompson*, 103 U.S. 168, 190, 195; *McGrain* v. *Daugherty*, 273 U.S. 135, 173; *Sinclair* v. *United States*, 279 U.S. 263, 291-4), but inquiries pertinent to matters which may properly be investigated by the Houses of Congress cannot be deemed to relate "merely to [the witness'] private or personal affairs," even though they call for disclosure of facts which would otherwise be his private and personal business. *McGrain* v. *Daugherty*, *supra*, at 177-180; *Sinclair* v. *United States*, *supra*, at 294-5, 296-8. As in the case of one called as witness in a judicial proceeding or served with a court-issued *subpoena duces tecum*, whose private affairs may be laid bare by questioning or by the documents produced, "the interests of privacy are there overbalanced by the interest in efficient government. That efficiency should be accorded judicial power and withheld from legislative power, is contrary to the dictates of public policy as well as

[8] Congress may also inquire into facts which might lead to an amendment of the Constitution or to impeachment of an executive or judicial officer. It may also be that Congress has authority to investigate for the sole purpose of bringing information to public attention. See *infra*, pp. 64-66.

inimical to a theory of separate but equal governmental powers. The use of such evidence for a legitimate purpose within the scope of the power adducing it, can as well be presumed for legislatures as for courts." Landis, *Constitutional Limitations on the Congressional Power of Investigation,* (1926) 40 Harv. L. Rev. 153, 219. "Within the realm of legislative discretion, the exercise of good taste and good judgment in the examination of witnesses must be entrusted to those who have been vested with authority to conduct such investigations." *Townsend* v. *United States,* 95 F. 2d 352, 361 (C.A.D.C.), certiorari denied, 303 U.S. 664. "We must assume, for present purposes, that neither house will be disposed to exert the power [of inquiry] beyond its proper bounds, or without due regard to the rights of witnesses." *McGrain* v. *Daugherty,* 273 U.S. 135, 175-6. See also *Tenney* v. *Brandhove,* 341 U.S. 367, 377-378.

4. R. S. 102 (*supra,* p. 2), under which respondent was tried and convicted, provides "an alternative method of vindicating the authority of Congress to compel the disclosure of facts which are needed in the fulfillment of the legislative function." *United States* v. *Bryan,* 339 U.S. 323, 327. A crime is committed when a witness before a Congressional committee intentionally fails to comply with a proper demand for records by the committee (*United States* v. *Bryan, supra*) or intentionally refuses "to answer any question pertinent to the question under inquiry." To convict, the

United States must show that the records demanded or the questions asked are "pertinent" to the subject-matter of the inquiry, for, as stated above, a witness has a right to refuse to produce records or to answer queries which are not pertinent. *Sinclair* v. *United States*, 279 U.S. 263, 292, 296-7; *McGrain* v. *Daugherty*, 273 U.S. 135, 176. The question of "pertinency" under R.S. 102 is decided by the court as one of law, and is not to be left to the jury. It does not depend "upon the probative value of evidence." *Sinclair* v. *United States*, *supra*, at 298-9. A deliberate, intentional refusal to answer or produce is sufficient; "good faith" or action on the advice of counsel furnish no excuse. *Sinclair* v. *United States*, *supra*, at 299.[9]

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[9] For a list of books and articles on legislative investigations, see Appendix B, *infra*, pp. 89-91.

Recent reported contempt cases involving Congressional inquiries include:—*United States v. Bryan*, 339 U.S. 323; *United States* v. *Fleischman*, 339 U.S. 349; *United States* v. *Josephson*, 165 F. 2d 82 (C.A. 2), certiorari denied, 333 U.S. 838; *Barsky* v. *United States*, 167 F. 2d 241 (C.A. D.C.), certiorari denied, 334 U.S. 843; *Eisler* v. *United States*, 170 F. 2d 273 (C.A. D.C.), certiorari granted, 335 U.S. 857, removed from docket, 338 U.S. 189, certiorari dismissed, 338 U.S. 883; *Marshall* v. *United States*, 176 F. 2d 473 (C.A. D.C.), certiorari denied, 339 U.S. 933; *Lawson* v. *United States*, 176 F. 2d 49 (C.A. D.C.), certiorari denied, 339 U.S. 934; *Kamp* v. *United States*, 176 F. 2d 618 (C.A. D.C.), certiorari denied, 339 U.S. 957; *Dennis* v. *United States*, 171 F. 2d 986 (C.A. D.C.), affirmed, 339 U.S. 162; *Morford* v. *United States*, 176 F. 2d 54 (C.A. D.C.), reversed, 339 U.S. 258; *Morford* v. *United States*, 184 F. 2d 864 (C.A. D.C.), certiorari denied, 340 U.S. 878; *Fields* v. *United States*, 164 F. 2d 97 (C.A. D.C.), certiorari denied, 332 U.S. 851; *Townsend* v. *United States*, 95 F. 2d 352 (C.A. D.C.), certiorari denied, 303 U.S. 664; cf. *Hearst* v. *Black*, 87 F. 2d 68 (C.A. D.C.).

II

The Information Sought from Respondent by the Select Committee Was Pertinent to the Inquiry into "Lobbying Activities" Authorized by the House of Representatives in Resolution 298

The Court of Appeals held that the information sought from respondent by the House Select Committee on Lobbying Activities was not "pertinent" to the inquiry into "lobbying activities" authorized by the House of Representatives in Resolution 298, and that respondent was therefore free to refuse to give the information. The court was of the view that "lobbying," as used in the Resolution, involves only "representations made directly to the Congress, its members, or its committees" (R. 203-4) and does not cover "efforts to influence public opinion" (R. 205). The majority opinion indicates that this holding that the House did not authorize the type of demand made upon respondent is largely based on the broader assumption that the grant of such power would have been unconstitutional (R. 205). We deal with the problem of constitutionality in Points I (*supra*, pp. 22-26) and III (*infra*, pp. 57-80). Here, we shall show that—constitutional considerations aside—the information sought was clearly "pertinent", and that "lobbying," as used in Resolution 298, includes deliberate organized efforts to influence indirectly the course of legislation.

A. *The terms and immediate legislative history of Resolution 298.*

The House Resolution (No. 298) establishing the Select Committee authorized and directed it to "conduct a study and investigation of (1) all lobbying activities intended to influence, encourage, promote, or retard legislation; and (2) all activities of agencies of the Federal Government intended to influence, encourage, promote, or retard legislation" (R. 188).

On its face, this is a broad authorization, and would seem plainly to have made pertinent an inquiry into the major sources of support for a lobbyist registered, as was CCG, under the Federal Regulation of Lobbying Act (60 Stat. 812, 839, 2 U.S.C. 261-270, *infra*, pp. 82-89), particularly since that Act applies, in terms akin to those of Resolution 298, to all persons soliciting or receiving money to be used principally "to influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States" (Sec. 307 (b), 60 Stat. 841, 2 U.S.C. 266 (b), *infra*, pp. 85-86) (see R. 205). And the direction to study and investigate "all" lobbying activities "intended to influence, encourage, promote, or retard legislation" is certainly wide enough to encompass all organized efforts to influence public opinion in regard to federal legislation. An inquiry designed to be limited to the practice of "button-holing" Congressmen would not be phrased so broadly.

The House debate on Resolution 298 confirms

this reading. The chief sponsor (Mr. Sabath) mentioned CCG—which rarely, if ever, engaged in direct representations to Congress—as being a large "lobby organization" and indicated that one purpose of the inquiry would be to study the workings of the Regulation of Lobbying Act (95 Cong. Rec. 11386). Congressman Buchanan, who became chairman of the Select Committee, referred to "pressure groups" and the operations of the Lobbying Act as the objects of the inquiry (95 Cong. Rec. 11389). Congressman Holifield spoke of the "pressing" need to look into the "over-all effect on legislation in this Nation of the expenditure of millions and hundreds of millions of dollars to influence legislation" (95 Cong. Rec. 11389). That remark could be applied only to so-called "pressure groups" and "indirect lobbyists," since "direct lobbyists" obviously do not expend such vast sums.

B. Past Congressional studies of "lobbying"

The propriety of this construction of Resolution 298 is further underlined by the history of past Congressional inquiries into "lobbying." The problem of what, if anything, to do about attempts to influence indirectly the course of legislation has been before Congress for a long time. The recent Select Committee investigation was the fourth major Congressional inquiry into lobbying since 1913, and there have been other inquiries which have touched on the subject. Each of the earlier lobbying investigations arose out of some widely publicized effort to affect public opinion with re-

spect to some single issue. See Lane, *Some Lessons from Past Congressional Investigations of Lobbying,* 14 Pub. Op. Quar. 14 (1950). None resulted in legislation. But each studied and viewed as "lobbying" an organized attempt to influence or mould public opinion on a matter of Congressional legislation.

In 1913, the tariff lobby's activities in opposition to the administration's Underwood Tariff Bill provoked President Wilson's statement to the press to the effect that (Lane, *supra,* at p. 16):

> Washington has seldom seen so numerous, so industrious, or so insidious a body. The newspapers are being filled with advertisements calculated to mislead the judgment not only of public men, but also the public opinion of the country itself. There is every evidence that money without limit is being spent to sustain this lobby *and to create an appearance of a pressure of public opinion antagonistic to some of the chief items of the tariff.* * * * [Emphasis added.]

This statement, in turn, provoked investigations in both houses of Congress. Among other things, it was disclosed in these investigations that the Beet Sugar Grower's Association and the Wholesale Growers Association had each raised and spent over $500,000 in their efforts to influence the content of the Underwood Tariff Bill. 1,525,000 pieces of literature, pro and con, has been mailed out under the frank of friendly members of Congress. In addition, in probing more broadly, the House

Committee charged that the National Association of Manufacturers had carried on a "disguised propaganda campaign" through newspapers, publicists, speakers, and literature in schools, colleges, and civic organizations throughout the country. H. Rep. 113, 63rd Cong., 2d sess., printed in 51 Cong. Rec. 565-584, 566-567, 574.

Although 12 bills calling for various kinds of Congressional regulation of lobbying were introduced in the Sixty-Third Congress (1913-1915), no legislation resulted. See Lane, op. cit. *supra*, pp. 16-20. Nonetheless, it is significant that the Sixty-Third Congress' House Committee defined lobbying as "The activity of a person or a body of persons seeking to influence Congress in any way whatsoever." See Hearings, House Select Committee on Lobbying Activities, 81st Cong., 2d sess., pt. 1, p. 7; see also 51 Cong. Rec. 569.

The pattern of activities studied as "lobbying" in the 1913 investigation reappeared in somewhat different aspect in the work in 1929-1931 of the Caraway Committee, a subcommittee of the Senate Judiciary Committee. See Hearings, Senate Lobbying Investigation, 71st Cong., 1st, 2d, and 3rd sessions; 72d Cong., 1st sess. The precipitant was, again, a tariff bill. The Committee's authorization was broad. The resolution referred to the specific incident which provoked investigation, and, also, to the activities of all other lobbying associations and lobbyists, their revenues and expenditures, and "the effort they put forth to affect legislation." Lane, op. cit. *supra*, p. 22. Although this commit-

tee did not submit a final report, several of its interim reports detailed the ways in which money was spent and the techniques which were said to be used by several groups in influencing legislation indirectly. Sen. Rep. 43, 71st Cong., 1st sess., pt. 4. (American Taxpayers' League), pt. 5 (sugar lobby), pt. 7 (Muscle Shoals lobby).

In 1935-1936, a third major investigation resulted from alleged efforts by the public utility companies to influence legislation regulating the public utility holding companies. The Black Committee was designated by the Senate to investigate "all lobbying activities and all efforts to influence, encourage, promote, or retard legislation, directly or indirectly" in connection with the Public Utility Holding Company Act (S. Res. 165 and 184, 74th Cong., 1st sess.). It made an intensive study of these efforts. It discovered a number of activities designed to create public opinion, or to give the impression that it was of certain character. It showed, for example, that out of a total of 31,580 telegrams sent to Washington from twenty different towns, all but 13 were filed and paid for by utility company agents, almost invariably without consent of the person whose name was used. Hearings, Special Senate Committee to Investigate Lobbying Activities, 74th Cong., 1st and 2d sessions and 75th Cong., 3rd sess., pp. 1014-1015. However, no legislation resulted. Lane, *supra*, pp. 25-29.

In 1938, the Civil Liberties Committee of the Senate Committee on Education and Labor described what it regarded as a large scale propa-

ganda campaign undertaken in the mid-thirties "in part to sway public opinion in favor of a legislative program" in the field of industrial relations. The Committee's report referred to "radio speeches, public meetings, news, cartoons, editorials, advertising, motion pictures" as "devices of molding public opinion [which] have been used without disclosure of [their] origin and financial support * * *" (S. Rep. 6, pt. 6, 76th Cong., 1st Sess. pp. 218-219).

The Temporary National Economic Committee, established in 1938, published in 1941 its monograph No. 26, entitled, "Economic Power and Political Pressures" which dealt with the problem of lobbying and propaganda techniques and their relationships to economic power. It recommended, *inter alia*, disclosure of sources of funds and expenditures for public relations services, advertising, radio, etc. (p. 194).[10]

The Federal Lobbying Act of 1946 represents the first substantial attempt to deal concretely with the "lobbying" problem as its prior studies had revealed it to Congress.[11] As pointed out above (pp. 29-30), the Act is particularly significant in understanding the scope of the 1949 investigation because the Select Committee's task, in part, was to evaluate the operation of that Act. See also H.

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[10] The Report of the President's Committee on Civil Rights (1947), pp. 52-53, recommended that the Government "provide a source of reference" for "accurate information" as to "those who are active in the market place of public opinion" (see *infra*, pp. 74-75).

[11] On the Lobbying Act, see Futer, *Analysis of Federal Lobbying Act*, (1949) 10 Fed. B. J. 366; Note, (1947) 47 Col. L. Rev. 98; Comment, (1947) 56 Yale L.J. 304.

Rep. 3138, 81st Cong., 2d Sess., p. 3 (General Interim Report of the House Select Committee on Lobbying Activities). The significance of the Act in this connection is, in turn, enhanced because it was a part of the Legislative Reorganization Act of 1946 which represented a major attempt to improve the framework of the legislative process. Among the improvements resulting were reduction in the number of standing committees, increase in the number of experts on legislative matters available for independent advice to Congress, and expansion of the office of legislative counsel. See 60 Stat. 812-852. All of these measures, and they are not exhaustive, were based on the assumption that the legislative process could operate effectively, in view of the complexities of the problems before Congress, only if committee procedures were simplified and the process of obtaining information was made more reliable. In this context, the statement by the Joint Committee on the Organization of Congress (which proposed the Federal Lobbying Act), about the significance of lobby control, seems to us of first relevance as showing what Congress then included in the concept of "lobbying" (S. Rep. 1011, 79th Cong., 2d Sess., p. 26):

> We fully recognize the right of any citizen to petition the Government for the redress of grievances or freely to expres opinions to individual Members or to committees on legislation and on current political issues. However, *mass means of communication and the art of public relations have so increased the pres-*

sures upon Congress as to distort and confuse the normal expressions of public opinion.

A pure and representative expression of public sentiment is welcome and helpful in considering legislation, but *professionally inspired efforts to put pressure upon Congress cannot be conducive to well considered legislation.* [Emphasis added.]

These earlier investigations and comments make it abundantly clear that Congress has for many years viewed the problem of "lobbying" as one of broad dimensions, extending to the deliberate and organized influencing of public opinion to support or reject legislation. Such a history makes it very improbable that the 1949 Congress would have intended that the words of House Resolution 298, establishing the present Select Committee, should be read so as to limit an investigation of "lobbying" to direct-contact activities. And they foreclose any assumption that, in the eyes of Congress, the scope of the lobby problem and legislation needed to solve it could be evaluated without information as to the organization and financing of plans to mould or create public opinion with respect to federal legislation.

C. *The Select Committee's consideration of the problem of "lobbying"*

With this background of consistent Congressional definition of the lobby problem in broad terms, the present Select Committee undertook its investigation. Review of the conduct of its hearings underlines its understanding of its charge,

and, in addition, shows why the information sought from respondent was pertinent to the "question under inquiry." [12]

The Select Committee first called witnesses to testify on the subject of "The Role of Lobbying in Representative Self-Government." The Select Committee was told, as earlier committees had been told, that the buttonholing-of-Congressmen approach to lobbying was no longer its major aspect. The testimony was that dollarwise, at least, by far the greater part of efforts to influence legislation were indirect efforts to "make" public opinion which, in turn, was expected to produce the necessary demand or support for legislation.[13] Thus, it was said that "modern public relations counsel * * * lay down a barrage of letters and telegrams on congressional offices, and use all the techniques of high-pressure publicity—press, radio, movies, advertising, pamphlets, books, magazines, exhibits—in an attempt to arouse legislative and public support for their programs." [14] Hearings,

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[12] For a study of the Select Committee's inquiry, see Note: *Investigations in Operation:—House Select Committee on Lobbying Activities*, (1951), 18 U. of Chi. L. Rev. 647.

[13] Even the Committee for Constitutional Government took the view that "the place to persuade Congressmen is back home." See H. Rep. 3138 (General Interim Report of the Select Committee), 81st Cong., 2d Sess., p. 31.

[14] The Committee, in its General Interim Report, refers to the fact that Representative Clarence Brown had declared that he could always "smell" a pressure-inspired letter, H. Rep. 3138, 81st Cong., 2d Sess., pp. 23-24, and, in reply, calls attention to a circular sent by a national organization to realtors throughout the nation giving several suggested alternate "personal" paragraphs for use in letters to Congressmen. See the General Interim Report, *supra*, pp. 37-40.

Select Committee on Lobbying Activities, 81st Cong., 2d sess., *supra*, pt. 1, p. 99.

A series of witnesses outlined for the Committee some of the reasons why, in their view, these efforts of lobby groups posed a problem for those who wished to assure that the legislative process remained responsive to community needs. The Select Committee was told that the processes of formation of "public opinion" made that opinion, at least with respect to certain issues, peculiarly susceptible and responsive to certain kinds of organized pressures. It was told, for example, that community responses of sufficient strength to have an impact on legislators tended to be group responses to proposed situations or measures which the group supposed would affect its interests in some substantial way. Some of these measures were so directly related to particular group interests that simply an awareness of the barest facts determined the group position. But when the group interest with respect to a particular legislative measure was less clearly defined, the witnesses thought that it became possible for astute organizers to develop group support for the measure, by associating the symbols of deeply felt group aims with the success of the particular measure, or by careful selection of facts relevant to the issue and the group interest. See Hearings, Select Committee, *supra*, pt. 1, pp. 15, 27-28; H. Rep. 3138, 81st Cong., 2d sess., p. 29, 35, cf. Hartley, *The Socia*

Psychology of Opinion Formation, 14 *Pub. Op. Quar.* 668; Fisher, *Public Opinion as a Process in Society*, 14 *Pub. Op. Quar.* 674.

The Committee was also told of various facts which, in the opinion of the witnesses, justified the suspicion that the process of opinion-moulding was producing the desired results. The Committee was told, for example, of a study of the relationship between opinion as expressed in Congressional mail in 1940 about the Burke-Wadsworth Selective Service Act and opinion as disclosed by privately conducted surveys. 13,000 letters obtained from five senators showed 90 percent of the writers to be against the bill. At the same time, a private survey showed that 70 percent of the public was for it. Hearings, Select Committee, *supra*, pt. 1, p. 20.

Again, witnesses contrasted what "leaders" of pressure groups represented was the view of their groups, and what impartial surveys showed their views to be. For instance, at a time when leaders of farm organizations were proclaiming the "farm opinion" on subsidies, a farm survey showed that only 14 percent of a cross section of farmers could give a correct definition of a farm subsidy and fully half had not the vaguest idea what such a subsidy was. Hearings, Select Committee, *supra*, pt. 1, p. 23.[15] It was suggested to the Select Committee

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[15] George B. Galloway, Senior Specialist in American Government for the Legislative Reference Service, Library of Congress, and who had been staff director on the Joint Committee on Reorganization of Congress, also testified, Hearings, Select

that lobbying organizations should provide data with respect to the methods of determining policy within the organization. Hearings, House Select Committee, pt. 1, *supra*, p. 116.

It was also suggested that the volume of money being spent on efforts to influence opinion raised questions about the effect of such efforts on the integrity of the legislative process. Cf. Hearings, Select Committee, *supra*, pt. 1, p. 121. The Select Committee noted that, except for organizations which have a large base of individuals for their support, most of the important groups seeking to influence public opinion are dependent on the support of large contributors. Its General Interim Report presented the following data with respect to the bank deposits of CCG and two of its subsidiary groups, which was alleged to be typical of such organizations and applicable not only to conservative groups but also to so politically divergent a group as the Civil Rights Congress (see H. Rep. 3138, 81st Cong., 2d Sess., p. 15):

Committee, *supra*, pp. 97, 99, that: "* * * the stand taken on matters of public policy by the spokesmen for organized pressure groups may not represent the majority opinion of their own groups or reflect the views of the American people. Some organized groups in American life have become so large that their leaders cannot keep in close touch with the membership. Consequently the leaders may sometimes, in the name of the group, press for legislation which serves their own personal interest or predilections. Public opinion polls in recent years have sometimes shown a marked divergence between the attitudes of the official spokesmen of organized groups and the opinion of the rank and file."

Group	Period	Total Deposits	Amount of checks of $500 or more	Percentage of total deposits	Number of checks of $500 or more	Average size of checks of $500 or more
America's Future Inc.	1947–50	$1,054,721.65	$560,883.49	53.1	423	$1,326
Constitution and Free Enterprise Foundation, Inc.	1947–50	139,239.17	85,095.00	61.1	71	1,199
Committee for Constitutional Government [16]	1947–50	1,285,125.82	508,343.04	39.6	383	1,320

On the other hand, it was strongly urged, as a separate and positive aspect of the problem, that the lobbies were a natural growth in response to the need for affording representation of real public interests in a legislature compelled to operate on a geographically representative basis. Particularly were such organizations said to be useful in furnishing factual information on matters of special interest to the groups they represented. Hearings, Select Committee, *supra*, pt. 1, pp. 41, 58.[17]

[16] Includes only one of its accounts.

[17] In its General Interim Report (H. Rep. 3138, 81st Cong., 2d Sess., p. 27), the Committee stated: "The service function of lobbying takes on many different forms. When representatives of organized groups appear before committees of Congress, for example, they are not only presenting their own case but they are also providing Members of Congress with one of the essential raw materials of legislative action. By the same token, the drafting of bills and amendments to bills, the preparation of speeches and other materials for Members, the submission to Members of detailed memoranda on bill-handling tactics—all of these are means by which lobby groups service the legislative process and at the same time further their own ends."

All of these factors, the relevance of which was suggested by witnesses to the Select Committee, were thought by the Committee to be within the scope of the investigation which had been delegated to it. The Select Committee indicated this, in saying, in its General Interim Report, that (H. Rep. No. 3138, 81st Cong., 2d Sess., pp. 3-4):

> The committee felt that its final and perhaps most important responsibility was to analyze in an objective and meaningful way the relation of large-scale lobbying in all of its ramifications to the long-run maintenance of our treasured representative system of government. In our view, this is the ultimate problem which large-scale lobbying raises. * * * [One] of the central purposes of government is that people should be able to come to it; in our system, lobbying has been a principal means by which this could be done. But at the same time it is important to ask whether our kind of popular government can indefinitely absorb the impact of an inherently expansive system of organized pressure; whether we can continue to absorb the social cleavages, the clusters of private power of which this mounting pressure is both cause and symptom. This is no abstruse problem in political theory. The way in which these questions are resolved is the key to our institutional future.

In sum, witnesses called in the general phase of its hearings told the Select Committee, first, that the processes of opinion formation could be abused; second, that the processes of determining public

opinion with respect to legislative issues, and particularly as that opinion was brought to the attention of Congress, were in fact being abused, although it was difficult to measure the extent of abuse; and, third, that there was a growing feeling that lobbies had become an integral part of the information-furnishing part of the legislative process and that, properly regularized, they could do that job effectively.[18]

After this general survey, the Select Committee then undertook a detailed study of particular organizations, drawn on the basis of preliminary staff studies, representing variant political outlooks and different professional approaches to the problem of influencing opinion. The Committee made a study of the so-called "housing lobby": of the National Association of Real Estate Boards and of various organizations which participated in its efforts. It studied the National Economic Council, the Committee for Constitutional Government, the Americans for Democratic Action, the Public Affairs Institute, the Foundation for Economic Education, and the Civil Rights Congress. It investigated what were thought to be the legislative activities of certain executive agencies: the Housing and Home Finance Agency, the Department of Agriculture, the Federal Security

[18] An eloquent statement of the value of lobbyists, of some of the factors underlying the lobby problem, and reasons why disclosure is valuable, appears in the Report of the California legislature's joint Committee Investigating Lobbying Activities. Hearings, Select Committee, *supra*, 81st Cong., 2d Sess., pt. 1, pp. 81-84.

Administration, and the Department of State, and of the supervisory functions, with respect to these agencies, of the Bureau of the Budget and the General Accounting Office. With respect to the efforts of these various bodies to affect legislative action, the Select Committee considered the extent of their activities in influencing opinion, directly and indirectly, the techniques employed, the devices used by the private agencies for raising funds, and in some detail it considered aspects of contingent fee lobbying.[19]

It is plain from this review that the Select Committee, from the beginning of its investigation, understood "lobbying activities" to include organized efforts of bodies such as the Committee for Constitutional Government to influence public opinion in regard to federal legislation by speeches, books, articles, other publications, etc.[20] From the

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[19] The Select Committee outlined its efforts as follows (H. Rep. 3138, 81st Cong., 2d Sess., p. 3):

"We have directed canvass along four principal lines:

1. The number, identity, and interrelationships of those groups and persons actively attempting to influence legislation.

2. The amounts and kinds of expenditures made by these groups and persons in attempting to influence legislation.

3. The ways in which funds expended for these purposes are solicited, and the sources of these funds.

4. The technique of influencing legislation, directly and indirectly."

[20] The minority members of the Select Committee apparently did not agree with the majority as to this definition of "lobbying activities", but it is not clear that the minority would construe that term, as used in Resolution 298, as narrowly as the court below. See Minority Views, H. Rep. 3239, Part 2, 81st Cong., 2d Sess., January 3, 1951, pp. 1-3.

Select Committee's point of view, it was indisputably entitled to discover CCG's methods of operations and the sources of its financial support.

D. *The pertinence of the particular information sought from respondent*

Each of the different aids to interpretation of Resolution 298 discussed in the preceding three subdivisions of this Point (*supra*, pp. 29-45) leads to the same conclusion:—That Congress authorized the Select Committee (and the Committee undertook) to inquire into the efforts of organized groups to influence public opinion with respect to Congressional action and, in that connection, to look into the working of the Regulation of Lobbying Act. On that view of the "question under inquiry" by the Select Committee, there is no doubt that the information demanded from respondent was "pertinent"—on any theory of the materials properly to be considered in determining that issue.

1. In the courts below, the Government's main ground for contending that pertinency had been shown was the fact that respondent and CCG had registered under the Regulation of Lobbying Act. Even on that limited basis, pertinency seems clear. The Select Committee was to inquire into the operation of the Lobbying Act and the need for its amendment. That Act, as it now stands, covers the receipt or solicitation of money to be used principally to aid in the influencing, directly or indirectly, of the passage or defeat of any legislation

by Congress (Sec. 307 (b), 2 U.S.C. 266 (b), *supra*, p. 29). Since both respondent and CCG were registered under the Act, the Select Committee was entitled to inquire about the sources of their financial support in order to see whether they had received or solicited undisclosed money for the purposes stated in the Act, and whether the monies paid for books and pamphlets were in reality contributions for the statutory purposes. Since the Act requires all "contributions" of $500 or more to be reported (*infra*, pp. 84-85), the Committee could properly inquire whether purchasers of $500 or more of CCG's publications were, in reality, contributors whose names CCG should have filed under the Act. This inquiry the Committee could reasonably think would only be accomplished by obtaining the names of the alleged purchasers, from whom further information might be obtained. The names would also reveal the total amounts paid by the same or related persons to CCG in one year. Further, the Select Committee was entitled to obtain this information in order to decide whether the Lobbying Act should be amended to require fuller and more detailed disclosures from organizations like CCG, or whether, on the other hand, such groups should be expressly exempted. Compare *Sinclair* v. *United States*, 279 U. S. 263, 297-298.

It would make no difference to the Select Committee's right to pursue these inquiries that the registrations were made under protest (see *e.g.*, R. 182). Respondent and CCG were, at the least,

arguably within the Lobbying Act's provisions, or they would not have registered. The Select Committee could certainly accept the registrations as proof that CCG's activities were within the general field with which the Lobbying Act is concerned, even though CCG might be held in a judicial proceeding not to be covered by the statute as now written.[21]

2. Respondent's and CCG's admitted registration under the Regulation of Lobbying Act would be enough, standing by itself, but the pertinency of the information demanded from respondent may also be sustained on the basis of the detailed information concerning CCG already before the Select Committee when respondent was called before it, and incorporated in the record of its hearings (Hearings before the House Select Committee on Lobbying Activities, 81st Cong., 2d Sess. (1950)) and in its Report Citing Edward A. Rumely, H. Rep. 3024, 81st Cong., 2d Sess., transmitted by the Speaker. *Supra,* pp. 5-9. Judge Bazelon grounded his dissent partially on this material (R. 210-211, 218-223), but the majority of the Court of Appeals held that the only materials which could be considered were those formally introduced into

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[21] For the reasons given, *infra*, pp. 57 *et seq.*, it is also immaterial whether the Lobbying Act, as applied to CCG, would be constitutional or whether particular amendments to the Act would be valid.

In this Point, as already noted (p. 28), we discuss the question of pertinency as if no constitutional issues had been raised and the answer depended solely on the scope of the authority Congress intended to give to the Select Committee.

evidence in the District Court (R. 209). In our view, these documents can be considered on the legal issue of pertinency.

a. Speaker Rayburn's certification of the Select Committee's Report Citing Edward A. Rumely, *supra*, was offered and admitted into evidence (R. 19, Gov. Ex. 4). The Report was physically attached to the certification, but was apparently not itself technically introduced into evidence (R. 19). However, it was actually before the trial judge and formed the official Congressional "statement of fact" of the witness' default, under R. S. 104, 2 U. S. C. 194, as well as being the Select Committee's own formal declaration on the subject of pertinency. There is nothing to show that it was not considered by the trial judge, and the opinion below shows affirmatively that its contents were weighed, though rejected, by the Court of Appeals (R. 199-200).

Similarly, the two printed volumes of the Select Committee's hearings dealing with CCG were actually before the trial judge and were referred to during the testimony of counsel for the Select Committee (see R. 21, 23-30, 32-35), as well as during respondent's testimony (R. 104-116). In his argument to the court on pertinency, respondent's counsel specifically referred to portions of the hearings which had not been formally put in evidence (see R. 61, 69, 90-91). For all practical purposes the hearings appear to have been before the court in exactly the same sense as if they had been intro-

duced. That technical lapse, if it be one,[22] should not stand in the way, for the issue of pertinency is one of law, solely for the judge, and does "not depend upon the probative value of evidence:" *Sinclair* v. *United States*, 279 U. S. 263, 298. And, here too, there is nothing to show that the trial court did not consider the hearings in passing upon pertinency, though it is clear that the Court of Appeals refused to do so (R. 209).

But we also submit that the Contempt Report and the data in the hearings (summarized in the Select Committee's general reports) may be considered by this Court even if the District Court did not do so. The Court can, of course, take judicial notice of committee hearings and reports, without proof. Cf. *United States* v. *Aluminum Company of America*, 148 F. 2d 416, 445 (C. A. 2).[23] Since the issue of pertinency was for the judge alone, there is no problem as to facts not being before the jury. The Government is thus not precluded from sustaining a conviction on appeal on a legal basis not advanced on trial, so long as the defendant is not thereby prejudiced. *Wagner* v. *United States*, 67 F. 2d 656 (C.A. 9); see *Kawakita* v. *United States*, 343 U. S. 717, 731-732.

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[22] Coupling the repeated references to the hearings with the colloquy of counsel reprinted *supra*, fn. 2, p. 4, one could conclude that the hearings were actually accepted in evidence and treated as such, although no formal notation to that effect was made.

[23] It is noteworthy that, in *McGrain* v. *Daugherty*, 273 U. S. 135, 179-180, the Court referred to proceedings in the Senate which had not been introduced into evidence or included in the record (No. 28, October Term, 1926).

Securities and Exch. Comm. v. *Chenery Corp.*, 318 U. S. 80, 88; *United States* v. *Holt Bank*, 270 U. S. 49, 55-56; Rule 52(a), F. R. Crim. P. No prejudice can be claimed. As the District Court has already sustained the probe under less fully developed circumstances (on respondent's theory of what was before the judge), there is no reason to suppose that it would have reached a different conclusion if a fuller showing had been made.

b. The burden of a large portion of the Report Citing Edward A. Rumely (*supra*, pp. 6-9) was that the evidence before the Select Committee indicated that CCG and the respondent may well have devised in recent years a means of circumventing the Lobbying Act—which requires reports of contributions of $500 or over—by insisting that contributions of more than $490 must be in the form of the "purchase" of books and pamphlets.[24] The Select Committee expressly reported that respondent's refusal to produce the names of these so-called "purchasers" prevented it from determining whether the Lobbying Act had been evaded or whether it needed amendment to prevent circumvention. See *supra*, pp. 8-9.

This was clearly the most precise and particularized showing of pertinence that could be demanded from a Congressional Committee. The only non-constitutional reason given by the Court

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[24] For instance, Chairman Buchanan, in a colloquy reproduced in the Contempt Report, pointed out that respondent had reported only about $25,000 in loans and contributions although it appeared that CCG would expend over a million dollars that particular year. H. Rep. 3024, p. 16; see R. 221.

of Appeals for rejecting this showing was that subterfuges or circumventions could be shown only if *all* financial records were considered together, and respondent was not permitted to show to the trial court the substantial data as to CCG's finances which he had furnished to the Select Committee (omitting names and addresses of purchasers) (R. 200). But the Select Committee was of the opposite opinion. It felt that financial data, without more, were insufficient, that it had to know the names of the "purchasers" in order to discover whether these "purchasers" were really contributors and, if so, whether they were splitting their contributions among themselves, their relatives, and associates; on that problem the other financial data would be of no help whatever.[25]

The Select Committee's view of its need for the names seems quite correct (see the dissenting opinion below, R. 210-212) and should have been adopted. At any rate, its opinion was extremely reasonable and should, therefore, not have been rejected. Where a Congressional Committee makes a reasonable showing of need for information, a court should not decide for itself that—though the Committee has, so to speak, shown "probable cause"—nothing will really be learned

[25] The Court of Appeals appeared to believe (R. 200) that, if subterfuges had been practiced, they would necessarily reveal themselves in falsifications of the financial data furnished by respondent. This seems to us to miss the point of the Select Committees' demand for the names. It was precisely because subterfuges (as described above, pp. 6, 8-9, 50-51) could coexist with complete technical "accuracy" in the financial records kept by CCG that the Committee desired to probe further.

in the end. Cf. *Oklahoma Press Pub. Co.* v. *Walling*, 327 U. S. 186, 216-217; *Blair* v. *United States*, 250 U. S. 273, 282; *Townsend* v. *United States*, 95 F. 2d 352, 361 (C.A. D.C.), certiorari denied, 303 U. S. 664.

c. The proceedings of the Select Committee, as revealed in its hearings and its general reports (aside from the Contempt Report), also clearly showed that CCG's activities were of a type directly pertinent to the Committee's work and that the information sought from respondent was relevant.[26]

The Select Committee knew, for example, that CCG had spent over $2,000,000 since 1946.[27] It had been informed that the principal activities of CCG appeared to be raising money, stimulating letter and telegram campaigns on pending legislation, and distributing books, pamphlets and other printed matter to Members of Congress, State legislators, other public officials, and selected private institutions, organizations, and individual citizens. H. Rep. 3024, 81st Cong., 2d Sess., pp. 1-2.

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[26] The question is not at all whether the facts which the Select Committee had learned about respondent and CCG are true. The question is whether the circumstance that they had been called to the attention of the Select Committee makes legitimate the Committee's concern, within the scope of its investigation, with the further information which respondent refused to furnish.

[27] Indeed, the fact that CCG expended large sums in influencing public opinion, and would therefore be studied, was called to the attention of the whole Congress before the Select Committee was even authorized to begin its work. See 95 Cong. Rec. 11386, *supra*, pp. 29-30.

The Select Committee knew, more particularly, that in 1944 CCG published and distributed a booklet entitled "Needed Now—Capacity for Leadership, Courage to Lead," in which CCG deprecated the value of older lobbying techniques under which delegations "buttonhole legislators" as "stunts which attract some popular attention but persuade no Congressmen." Rather, CCG urged: "The place to persuade Congressmen is back home." The Select Committee knew that, between 1937 and 1944, CCG sent out:

> Eighty-two million pieces of literature—booklets, pamphlets, reprints of editorials and articles, specially addressed letters and 760,000 books.
>
> More than 10,000 transcriptions carrying 15-minute radio talks on national issues, besides frequent national hook-ups for representatives of the committee.
>
> Three hundred and fifty thousand telegrams to citizens to arouse them to action on great issues.
>
> Many thousands of releases to daily and weekly newspapers—full page advertisements in 536 different newspapers with a combined circulation of nearly 20,000,000.

Quoted from *Needed Now—Capacity for Leadership, Courage to Lead* (New York, 1944), pp. 30-31 in H. Rep. 3138, 81st Cong., 2d Sess., p. 31.

The Select Committee knew that CCG's activities had expanded greatly since 1944. It knew, from respondent's testimony, that CCG had distrib-

uted close to 700,000 copies of *The Road Ahead* by John T. Flynn since its publication in 1949; and it was informed that this book, although in part of a general nature, included "sharply critical analyses of the proposed Columbia Valley Authority, of national health insurance, the Spence bill, the Brannan plan".[28] The Select Committee knew further that CCG had distributed widely a number of publications which included *Why The Taft-Hartley Act?, Labor Monopolies or Freedom,* and a book by Melchior Palyi, *Compulsory Medical Care and the Welfare State.* The Select Committee states that:

> The reader of these and other Committee for Constitutional Government materials is exhorted again and again to write his Congressman, to send a copy of the book or pamphlet to the Congressman, and to distribute the material as widely as possible. The reader is not only urged to accept a point of view, but to act as well.

The Select Committee also believed that CCG had "set its sights on the distribution of 2½ mil-

[28] The Select Committee's General Interim Report (H. Rep. 3138, 81st Cong., 2d Sess., p. 32) quoted from p. 140 of *The Road Ahead* some comments on the Spence bill and the Brannan plan. The Select Committee then notes that the Spence bill is specifically identified in the book as H. R. 2756 introduced February 15, 1949, and that the Brannan plan is similarly identified as being "embodied in Senate bills 1971 and 1882." It is further noted that, in a special appendix to CCG's edition of *The Road Ahead*, the following appears:

"In our opinion, sane farm leaders and business leaders especially had better bestir themselves. If they let the Brannan plan campaign go by default, they and all of us will rue the day."

lion copies of *The Road Ahead,* to what [CCG] calls the 'opinion-molding leadership individuals of the Nation who build the greatest influence and who will buy in large quantities and distribute in their respective circle.' " And the Select Committee thought this to be an accurate reflection of the general approach of all mass-pamphleteering groups, *i.e.,* stimulation of grass roots pressure, with concentration on the strongest roots. H. Rep. 3138, 81st Cong., 2d Sess., p. 36.

Moreover, the data on the nature of CCG's program took on additional significance when considered in connection with the Select Committee's information that CCG had, after the enactment of the Lobbying Act, adopted a new practice of accepting payments of over $490 only if the remitter specified that the funds be used for the distribution of one or more of CCG's books or pamphlets. See pp. 6, 8-9, 50, *supra.*[29] These facts suggested to the Committee that the purchases were, in substance, "contributions". Certainly, they were not the same as purchases of books and pamphlets from a publisher who has no such special and regularized interest in the political content of his publications as it appears that CCG had. Therefore, as we have already noted, both the comment of the

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[29] Rumely testified at the hearings that this policy went into effect when the Lobbying Act was passed. Hearings, *supra,* pt. 5, p. 37. He also testified that this was done because "we didn't want to get into the position of reporting our contributors." Hearings, pt. 5, p. 29; see, also, pp. 37, 42.

See also the correspondence with Eli Lilly & Co., reproduced in the dissenting opinion below (R. 219-221).

Select Committee's Report citing respondent for contempt, see pp. 8-9, *supra,* and that of the dissenting opinion below (R. 210-I, 222-3), properly emphasize that, in view of the requirements of the 1946 Act, the information sought from respondent was pertinent because of the light it might shed on a possible evasion, in letter or spirit, of the disclosure requirements of the Act; and, as well, the possible need for further legislation.

In this connection, the Select Committee had even more precise reason to probe further. It was disturbed by a discrepancy between respondent's testimony that, in 1949, CCG "had 22,000 orders for books, averaging $15 each—80 percent for 1 to 10 copies, a small number for larger quantities" (Hearings, *supra,* pt. 5, p. 49), on the one hand, and a report by the Eli Lilly Co., on the other, that that company had "contributed" $25,000 to CCG in 1949. As CCG had indicated that a "contribution" of $25,000 would have been reported by CCG, and no such contribution was reported, the Select Committee suspected that the sum must have been used for publications of CCG. And yet, this cast some doubt on respondent's statement as to the number of books sold and the volume in which they were sold. The refusal to disclose the names of purchasers obviously made almost impossible any attempt to get a complete picture of CCG's activities and financial support. See H. Rep. 3138 (General Interim Report), 81st Cong., 2d Sess., pp. 12-13. Even if the Eli Lilly "contributions" were for publications other than books, the fact remains that

the discrepancy between Lilly's "contribution" and Rumely's "purchase" was a matter with which the Select Committee could properly be concerned.

If, as we have shown (*supra,* pp. 29-45), the Select Committee was empowered to investigate (a) the efforts of organized groups to influence public opinion with respect to federal legislation, and (b) the working of the Regulation of Lobbying Act, there can be no question but that this collection of data on CCG's opinion-influencing activities and efforts to avoid full disclosure under the Act warranted the Committee's demand for the information which respondent refused. The names and addresses of the "purchasers" who paid $500 or more were clearly pertinent to both aspects of the inquiry.

III

The House of Representatives Could Validly Authorize the Select Committee to Compel Disclosure of the Information Sought from Respondent

The foundation stone of the majority opinion below is that Congress is without constitutional power even to inquire into organized efforts to influence public opinion for or against legislation. We have pointed out (*supra,* p. 28) that the opinion shows that the narrower holding—that the House of Representatives did not authorize that inquiry—is based on the assumption that authorization would have been unconstitutional. As we have shown in Point II (*supra,* pp. 28-57), however, such a narrow construction of the authorization given in Resolution 298 is wholly

impossible. Therefore, we must face squarely the problem whether the Constitution prohibits such inquiry.

The Court of Appeals' view appears to be that the Select Committee's demands on respondent were not in aid of the legislative function because the First Amendment and the representative nature of our government prevent Congress from adopting legislation regulating, in any way, the operations of organized groups such as CCG which seek to influence public opinion with respect to federal legislation (R. 200, 201-3, 205-6, 208-9). The court also apparently viewed the demands made on respondent as in themselves a violation of the First Amendment, and an abridgment of the rights of free speech and press (R. 200, 202-203, 206). Neither of these related holdings can be accepted. The Select Committee's inquiry was within Congress' general competence, and the First Amendment interposes no automatic bar either to legislation or to inquiry.

A. *The inquiry was within the competence of Congress*

1. *Legislative function of Congress:* In Point I (*supra,* pp. 22-26), we have set down the now incontestable principles that (a) Congress may compel testimony in aid of its legislative function, (b) the power of inquiry is generally more extensive than the substantive power to legislate, and (c) matters otherwise personal and private lose that character when they are pertinent to an in-

quiry in aid of legislation. Applied to this case, these settled rules clearly authorized the demands made by the Select Committee, for there can be no doubt, the First Amendment aside, that Congress has jurisdiction to legislate in this field. In that connection, it is quite unnecessary to consider the full extent to which Congress may validly legislate, or whether it should legislate, in relation to organized efforts to influence public opinion on federal legislative matters, for the court below was clearly in error in assuming that *no* valid legislation could possibly stem from the phase of the Committee's inquiry which was concerned with CCG and respondent.[30]

Disclosure legislation is, of course, the means of "regulation" uppermost in the thinking of many who have considered these matters. As the dissenting opinion points out (R. 223-4), the principle of disclosure is one embodied in our law in many forms, and one which has been consistently upheld. *E.g.*, the disclosure provisions of the Federal Corrupt Practices Act (now 2 U.S.C. 241-256) were upheld in *Burroughs and Cannon* v. *United States*, 290 U.S. 534, 545; the conditioning of second class mailing privileges on disclosure of ownership and the marking of advertisements as

[30] Respondent has not contended [as did Daugherty (*McGrain* v. *Daugherty*, 273 U.S. 135), Sinclair (*Sinclair* v. *United States*, 279 U.S. 263), and Eisler (*Eisler* v. *United States*, certiorari dismissed, 338 U.S. 883)], and the court below did not hold, that the Select Committee had no legislative purpose. As a matter of fact, it did recommend certain legislation, and report that it had considered other proposals. See fn. 34, *infra*, p. 63.

such was upheld in *Lewis Publishing Co.* v. *Morgan*, 229 U.S. 288; *New York ex rel Bryant* v. *Zimmerman*, 278 U.S. 63, 72-77, sustained a state statute compelling disclosure of the membership and constitution of the Ku Klux Klan. It has been broadly held that an administrative agency may be empowered to receive and publicize information within the sphere of its activities. See *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U.S. 419, in which the Court observed, in relation to the registration provisions of the Public Utility Holding Company Act, that "the requirement of information is in itself a permissible and useful type of regulation" (p. 439).

The same method of protecting the public interest by requiring the disclosure of factual information in fields subject to the power of Congress has been employed in a number of other federal statutes. Cf. Securities Act of 1933, 48 Stat. 74, 15 U.S.C. 77a; Food, Drug and Cosmetic Act, 52 Stat. 1040, 1041, 21 U.S.C. 321; Alien Registration Act, 54 Stat. 673, 8 U.S.C. 452; Regulation of Lobbying Act, 60 Stat. 839, 2 U.S.C. 261; Foreign Agents Registration Act, 52 Stat. 631, 22 U.S.C. 611; Act of October 17, 1940, requiring registration of certain subversive organizations, 54 Stat. 1201, 18 U.S.C. (1946 ed. 14-17, now 18 U.S.C. 2386); Internal Security Act of 1950, 64 Stat. 987, 993-996; 18 U.S.C. 612, 62 Stat. 719, 724, barring anonymous advertisements, etc., relating to candidates for federal office (R. 223).

Over twenty states seek to regulate some aspects of lobbying through disclosure (see Note, (1947) 47 Col. L. Rev. 98, 99-103; Comment (1947) 56 Yale L. J. 304, 313-316). Almost all the states require disclosure of campaign contributions and some also regulate political advertisements and circulars. (Nutting, *Freedom of Silence: Constitutional Protection Against Governmental Intrusions in Political Affairs,* (1948) 47 Mich. L. Rev. 181, 204-206).

Congress might well seek to adapt some variant of these statutory disclosure provisions to the present problem. It might clarify or expand the coverage by the Regulation of Lobbying Act of organizations like CCG which receive money for the purpose of influencing federal legislation.[31] Or it might regulate or prohibit anonymous distribution of publications relating to federal policy or legislation. It is possible that corporations (or other entities) spending corporate funds for such purposes could be required to report that fact to their stockholders or to Congress. Mass distributors of political books and publications (not in the publishing or

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[31] The United States District Court for the District of Columbia recently held certain sections of the Lobbying Act unconstitutional for indefiniteness (*National Association of Manufacturers* v. *McGrath,* 103 F. Supp. 510, dismissed as moot by this Court, No. 174, October 13, 1952). This holding obviously does not negate congressional power to legislate with respect to indirect lobbying. See fn. 40, *infra,* p. 70. The fact that the particular Act was held deficient (and we do not concede that it is deficient) does not mean that Congress cannot enact a valid statute on the same subject, nor did the District Court so hold. Indeed, the case might be cited to illustrate the need for continued congressional inquiry as a basis for drafting a more definite law. Cf. *United States* v. *Slaughter,* 89 F. Supp. 205 (D.D.C.).

book business), as some of CCG's purchasers appear to be, might be required to report that activity.

We need not undertake to support the wisdom, necessity, or advisability of such legislation, nor even its constitutionality as applied to all situations.[32] Nor is it material that the Select Committee might possibly recommend, and Congress adopt, invalid legislation. Compare *United States* v. *Josephson*, 165 F. 2d 82 (C.A. 2), certiorari denied, 333 U. S. 838; *Barsky* v. *United States*, 167 F. 2d 241 (C.A.D.C.), certiorari denied, 334 U. S. 843.[33] Unless it could be said, flatly and *a priori*, that Congress is wholly foreclosed by the Constitution from using this statutory device of disclosure with re-

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[32] See the objections in II Chafee, *Government and Mass Communications* (1947), 494.

[33] The Court of Appeals for the Second Circuit said in *Josephson, supra*, at pp. 90-91:

"* * * in substance [the contention is] that the Committee's power to investigate is limited by Congress' power to legislate; Congress is prohibited from legislating upon matters of thought, speech, or opinion; ergo, a statute empowering a Congressional committee to investigate such matters is unconstitutional. The mere statement of this syllogism is sufficient to refute it. Congress obviously can use information gathered by this Committee to pass legislation not encroaching upon civil liberties, as above noted. The appellant's argument necessarily, therefore, is reduced to the absurd proposition that because the facts resulting from the Committee's investigations conceivably may also be utilized as the basis for legislation impairing freedom of expression, the statute authorizing such investigations must be held void."

The Court of Appeals for the District of Columbia Circuit said in *Barsky, supra*, at p. 245 that: "preliminary inquiry has from the earliest times been considered an essential of the legislative process. * * * Obviously, the possibility that invalid as well as valid legislation might ensue from an inquiry does not limit the power of inquiry; invalid legislation might ensue from any inquiry."

spect to the financing, or supporters, or participants, or customers, or opinion-forming techniques, of organizations like CCG which admittedly seek to influence Congressional action—so that there would be no point even to Congress' collecting the facts or considering the problem—the inquiries directed to respondent would have to be deemed in aid of Congress' legislative function.[34]

It seems plain to us that this unequivocal rejection of all power cannot be supported. It is not denied that, apart from the First Amendment, Congress would have substantive authority to legislate on these matters, under its power to control its own activities, under the commerce power, and under the postal power. The only ground which has been advanced in this case for flatly denying all Congressional authority in this area is the First Amendment. Since that claim bears on all phases of the constitutional argument, we defer our detailed answer (*infra*, pp. 61-78) until we have discussed two other sources of Congressional jurisdiction.[35]

2. *Power of Congress over its own operations:* In Point I (*supra*, pp. 24-25), we indicated that, in

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[34] The Select Committee, in its final Report and Recommendations on the Federal Lobbying Act (H. Rep. 3239, 81st Cong., 2d Sess., January 1, 1951), did recommend certain amendments to the Lobbying Act (pp. 29-31), and listed other amendments which were considered and rejected (pp. 31-2), including a proposal to exempt all groups and organizations.

[35] It might possibly be contended that a "right of privacy" protected by the Due Process Clause of the Fifth Amendment would, quite apart from the First Amendment, forbid any disclosure legislation. We discuss this argument briefly in Point III; C, *infra*, pp. 78-80.

addition to inquiries aiding it to legislate on a particular subject, Congress has power to inquire into its own operations and the influences affecting it. We believe this to be a separate basis for the inquiry under test, a basis which would support it even though (as is not the case) there were no aim to consider legislation. The fact is that for two generations Congress has been seeking to find out the facts about so-called "interest" or "pressure" groups, in their relation to the work of Congress, so that it can properly evaluate the facts and information they bring forth, as well as the public opinion they claim to represent. *Supra,* pp. 30-45. As we show in detail below (*infra,* pp. 70-75), there can be no doubt that this end is a legitimate one for Congress, and that the problem cannot be dismissed as unreal. For Congress, then, to inform itself on these general influences, through the mechanism of a committee inquiry, seems as clearly its right as the undisputed power to probe corrupt influences on individual members.[36]

3. *Congressional authority to bring information to public attention:* It may also be that Congress has general authority to investigate for the sole purpose of bringing information to public attention. There is considerable support, among students of Congressional power, for the view that the "informing function" of Congress in itself would have brought this investigation within its

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[36] Here, too, it will undoubtedly be said that the First Amendment forbids Congress to take action. See *infra,* pp. 66-78.

constitutional competence.[37] Potts, *Power of Legislative Bodies to Punish for Contempt*, 74 U. Pa. L. R. 691, 811; Galloway, *Investigative Function of Congress*, 21 Am. Pol. Sc. Rev. 47, 62; Cousens, *Investigations Under Legislative Authority*, 26 Georgetown L.J. 905, 918; McGeary, *The Developments of Congressional Investigative Power*, p. 104. Woodrow Wilson expressed the opinion that

> It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function.[38]

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[37] It has been suggested that the function of informing the public is implied and inherent in the legislative purpose. *Landis, supra*, 40 Harv. L. Rev. at 205, 206, n. 227. A representative democracy relies upon the creation of a favorable public opinion for the acceptance and thus the enforcement of new legislation.

[38] Wilson, *Congressional Government* (1885), as quoted in *Tenney* v. *Brandhove*, 341 U.S. 367, 377.

We need not proceed further with this suggestion, in this particular case, since bringing information to public attention is one of the objects of the principle of disclosure which, in our view, Congress could embody in valid legislation. *Supra*, pp. 59-63; *infra*, pp. 66 *et seq.* If such legislation could be enacted, Congress could perform the same function directly through its own agencies.

B. *There is no interference with First Amendment rights*

In the Court of Appeals' opinion, the First Amendment is invoked in a dual aspect:—first, to deny to Congress all competence in this area, either in passing legislation or in fulfilling any other function; and, second, to brand the Select Committee's demand for information as in itself a violation of the rights of free speech and press. We shall deal with these interrelated points together, since compulsory *ad hoc* disclosure to the Select Committee is closely akin to regularized disclosure required by statute or by Congressional policy.

1. As stated above (in Point III, A *supra*, pp. 58-59, 62-63), the Select Committee's demand on respondent was valid unless all possibility of disclosure legislation in this field is forbidden by the First Amendment. That could only be so if such a statute necessarily amounted to an abridgment of the rights of free speech, free press, or the right to petition. But disclosure of true facts, we submit, need not and does not constitute an abridgment of

First Amendment rights, certainly not where, as here, a legitimate purpose is plainly served.

First, what is the nature of the abridgment alleged? It is certain that requiring the respondent or CCG to disclose the names of larger purchasers is not equivalent to a proscription or punishment by the Government of the publication or distribution of CCG's books or of any of their ideas. No *legal* sanction of any kind is imposed on the expression or dissemination of any ideas by anyone. Nor is either respondent or CCG to be compelled, on pain of legal sanction, to disclose or avow political beliefs they wish to keep private.

The restraint on First Amendment rights is said to arise in this indirect way:—If respondent is forced to reveal the names and addresses of volume purchasers of CCG publications, either now or as the result of legislation, the purchasers will know that there are some Congressional purposes for which their names can be disclosed and published. The suggestion is that this may cause embarrassment or even public disapprobation, and some may be deterred from becoming volume purchasers of CCG's books. The freedom of these purchasers to communicate their ideas is thus limited, it is said. In turn, the financial support of CCG is diminished, and thereby its freedom to communicate ideas by selling books is limited. Stripped to its essentials, the restraint relied upon is the social consequence of disclosure on some one else. Respondent and CCG are not concerned about *legal* sanctions which

will discourage the purchasers. They are disturbed about opprobrium and pressures which they suppose that other members of the community will direct at supporters of CCG, if their names are disclosed.

Disclosure of the facts may actually lead to a restraint in this sense, but the issue is whether this sort of indirect non-legal consequence of public disclosure amounts to an abridgment of First Amendment rights by the Federal Government. Similar peripheral non-legal restrictions, flowing from legitimate governmental action, are common and most often unavoidable. Civil and criminal libel and slander provisions undoubtedly deter some people from communicating ideas which are actually permissible but which they fear will provoke litigation (*cf. Beauharnais* v. *Illinois,* 343 U.S. 250). Legislation requiring disclosure of election campaign contributions (*Burroughs and Cannon* v. *United States,* 290 U.S. 534, 545), or forbidding anonymous political flyers, will cause some to refrain from supporting, with money or publicity, the candidate of their choice. The same is probably true of the disclosure requirements incident to second class mailing privileges (*Lewis Publishing Co.* v. *Morgan,* 229 U.S. 288). The existence of the Hatch Act probably deters some federal employees from activity freely permitted by that statute (*United Public Workers* v. *Mitchell,* 330 U.S. 75). Perhaps, the Smith Act and the sedition statute (*Dennis* v. *United States,* 341 U.S. 494), the non-

communist affidavit provision of the Labor Management Relations Act (*American Communications Association* v. *Douds*, 339 U.S. 382), and the unfair labor practice provisions of the National Labor Relations Act (*National Labor Relations Board* v. *Virginia Elec. & Power Co.*, 314 U.S. 469), have comparable effects on certain individuals. Even the prospect of being called as a witness in a proceeding before a court or other tribunal, or of being investigated by a public or private agency, may discourage some people from uttering, even privately, wholly permissible ideas.[39]

In short, there is frequently self-"censorship" or self-restraint in expression or communication, stemming from but going beyond a legal requirement, but the First Amendment has never been thought to invalidate the law or other Government action because of such tangential, voluntary consequences. Caution, a liking for privacy, timidity, or the desire to be free of controversy or litigation, may impel people voluntarily to refrain from expressing their views in order to avoid all chance of incurring some *legal* sanction—which is not actually imposed on or related to the expression of those views—but that does not mean that any law has abridged their freedom of speech or press. The bur-

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[39] The National Labor Relations Act (*Associated Press* v. *National Labor Relations Board*, 301 U.S. 103), the Fair Labor Standards Act (*Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186), and the Sherman Act (*Associated Press* v. *United States*, 326 U.S. 1), as well as the income tax, may likewise have affected publication by existing or potential publishers.

den, non-existent for some but actual for many, is one which must be borne along with others as part of the price of citizenship in a necessarily imperfect world.

This is all the more true, of course, when the sanction feared is not legal at all, but social or economic, such as a hostile public reaction resulting from disclosure of opinions or activities. So here, if disclosure of the purchasers' names and addresses, either in the investigation or as a result of legislation, serves a proper purpose—as we show immediately below that it does (*infra*, pp. 70 *et seq.*; see also *supra*, pp. 30, *et seq.*)—the indirect voluntary "restraint" on their or CCG's communication of ideas does not call the First Amendment into play.[40]

2. Whatever may be the wisdom of adopting it, there can be no denial that compulsory disclosure of facts relating to groups seeking to influence federal legislation could advance legitimate public interests, as the Congress would perceive them. The intricate back-and-forth process between representative and represented, which is the gist of the democratic form of government, has brought forth two central problems with which Congress can rightly concern itself. The first is to ascertain correctly

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[40] None of the several disclosure statutes now on the books of the federal and state governments (*supra*, pp. 59-61) has been held, so far as we are aware, to violate First Amendment rights. The District Court for the District of Columbia, which voided the Federal Regulation of Lobbying Act (fn. 31, *supra*, p. 61), did not base its holding on the First Amendment, except as to the statute's penalty clause forbidding a person convicted of a violation from influencing legislation during a three-year period.

the true will, desires, needs, and hopes of the people as a whole, and of the different groups in the Nation. The other aim is to secure the facts, all the facts, on which to build legislative action. Without both kinds of knowledge, legislation is hobbled and to that extent representative government fails in its exacting goals.[41]

For at least forty years, as our survey in Point II shows (*supra*, pp. 30 *et seq.*), Congress has been much concerned with the relationship between these two prime ends of opinion-finding and fact-finding, on the one hand, and the groups and organizations which seek to encourage or retard Congressional action, on the other. Despite the remarks of the court below on the unsullied beneficence of such activity (R. 203, 208), there have been many, inside Congress and out, disturbed by the thought that proper attainment of the two fundamental aims has been partially frustrated by persons with special axes to grind. Congress, in legislation, has an obligation to the general welfare which "is not the mere sum * * * of Maine potatoes, Texas oil, Wyoming wool, Colorado silver, Mississippi cotton, and Georgia peanuts." Hearings, Select Committee, 81st Cong., 2d sess., pt. 1, p. 100. As those interests, and their like, have borne down upon it, Congress has repeatedly undertaken to determine for itself how much it has

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[41] The Legislative Reorganization Act of 1946 resulted from a deep concern with both aspects. See *supra*, pp. 35-36. The Regulation of Lobbying Act was part of the Legislative Reorganization Act, and the same concern underlies many of the other proposals for disclosure legislation relating to "lobbying", discussed *supra*, pp. 37-43, 61-62, and *infra*, pp. 72-75.

been subject to pressures only partially representative of the total interest, and how much these pressures have distorted its functioning. The belief has grown, in important segments of Congress and the Nation, that organized "pressure" groups have partly succeeded in artificially creating "public opinion," thereby confusing the normal and proper operation of the legislative process and the assumptions on which the First Amendment is based.

Serious concern has also been expressed whether the development of mass media of communication does not at once reveal and develop certain tendencies in our national life which endanger the premises on which representative self-government is founded. See *e.g.*, I Chafee, *Government and Mass Communications* (1947), pp. 8-29; cf. Hocking, *Freedom of the Press* (1947), pp. 12-21, 41-50, 51-78, 84.[42] The testimony of scientific psychology underscores the assumptions on which some of this concern is based. See Hartley, *The Social Psychology of Opinion Formation,* 14 Pub. Op. Quar. 668; Fisher, *Public Opinion as a Process in So-*

[42] And see Hocking, *op. cit. supra,* at pp. 148-149:

"The public cannot expect to find 'the truth' furnished it ready made by any speaker or writer; with the best efforts of the press, the reader must still work for it. But if the reader is constantly baffled, he may reach the conclusion that, for him, the truth is not to be had, either because the 'best efforts' of the press are not bent to that end, or because truth is inaccessible, or because it is 'relative' and each interpreter has a right to his own. * * * If the typical American reader reaches this stage of disillusion, government by public opinion necessarily loses its case and gives way to what we increasingly have, government by competing pressures, each of which has its *version* 'legitimately' corrupted by its interest."

ciety, 14 Pub. Op. Quar. 674. And see Note (1951), 51 Col. L. Rev. 98, 105-106 (collecting authorities indicating the limited appeal, as shown by experience and experimental psychology, of reasoned argument, and the variety of reasons for this limited appeal); Comment (1947), 56 Yale L. J. 304, 306-313.

The aim of the responsible students, public and private, has not been to silence or prohibit the "interest" or "pressure" groups, but to utilize some measure of factual disclosure in an attempt to remedy the imbalance which has been found, without forbidding or limiting the expression of ideas. There might, of course, be indirect disclosure of the political ideas of some persons whose views may now be relatively private (*e.g.*, some larger purchasers of CCG's books), but only of those who affirmatively engage in attempting to affect public opinion in the political sphere.[43] And such disclosure of these activities would enable Congress and the public, it is believed, better to appraise the source and true worth of the facts and arguments brought forth, and thus to reach wiser judgments on public issues relating to federal legislation.

These permissible purposes of the principle of disclosure were summarized in the dissenting

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[43] By way of perhaps unnecessary *caveat*, we emphasize that our entire discussion of disclosure relates only to groups, like CCG, which are concededly engaged in actively influencing mass public opinion on federal matters—and so far as this case is concerned the disclosure need relate only to *facts* such as names and addresses. We are not here concerned with the activities of private individuals or of those groups which do not deliberately seek, as a major activity, to influence opinion on federal matters.

opinion of Mr. Justice Black, in *Viereck* v. *United States*, 318 U. S. 236, involving the Foreign Agents Registration Act (22 U.S.C. 611, *et seq.*) (in which the Court found it unnecessary to pass on the statute's constitutionality because it held Viereck's activities not within its purview). Mr. Justice Black said (at p. 251):

> * * * Resting on the fundamental constitutional principle that our people, adequately informed, may be trusted to distinguish between the true and the false, the bill is intended to label information of foreign origin so that hearers and readers may not be deceived by the belief that the information comes from a disinterested source. Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment. * * *

See, also, *Associated Press* v. *United States*, 326 U. S. 1, 20, 28, recognizing that it is a proper governmental interest to maintain the conditions on which the freedom of expression depend. *Cf. Burroughs and Cannon* v. *United States*, 290 U. S. 534, 545 (Corrupt Practices Act); *Best* v. *Sidebottam*, 270 Ky. 423, 430, 431 (right of public to know character of campaign contributors); *La Belle* v. *Hennepin Co. Bar Assn.*, 206 Minn. 290, 295-6 (the same).

We think it significant, too, on the relationship of disclosure legislation to the First Amendment, that the President's Committee on Civil Rights, ever zealous to protect civil liberties, reported (see *To Secure These Rights*, 1947, p. 53) that the principle

should be extended "to all of those who attempt to influence public opinion" and the federal government "ought to provide a source of reference where private citizens and groups may find accurate information about the activities, sponsorship, and background of those who are active in the market place of public opinion." See, also, Ernst, *The First Freedom* (1946).

3. The same conclusion of validity may be reached by a somewhat different verbal route, if it be assumed that the self-restraint consequent upon disclosure can in some circumstances be a restraint to which the First Amendment would apply. It is a truism that First Amendment rights are not absolute. The Court has noted that even where freedom to criticize the courts was involved, "reviewing courts are brought in cases of this type to appraise the comment on a balance between the desirability of free discussion and the necessity for fair adjudication, free from interruption of its processes." *Pennekamp* v. *Florida,* 328 U. S. 331, 336. In *United Public Workers* v. *Mitchell,* 330 U. S. 75, the Court, in upholding the Hatch Act, declared that it "must balance the extent of the guarantees of freedom against a congressional enactment to protect a democratic society against the supposed evil of political partisanship by classified employees of government" (p. 96), and in that connection considered the connection between the prohibitions of the statute and its object, the limited restrictions on freedom to speak, and the large public interest in the efficiency of the government (pp.

94-103). See *American Communications Association* v. *Douds*, 339 U. S. 382, 404-5, and 402-12. Cf. *e.g.*, *Cox* v. *New Hampshire*, 312 U. S. 569, 574; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571-2; *National Labor Relations Board* v. *Virginia Electric & Power Co.*, 314 U. S. 469; *Valentine* v. *Chrestensen*, 316 U. S. 52; *Prince* v. *Massachusetts*, 321 U. S. 158, 168-170.

In this case, the restraint on freedom of expression is, at most, a minor and limited one and can hardly be deemed heavy. The suggestion that freedom of expression will be seriously restricted because the purchasers of CCG's books will be discovered to be supporters of that organization or of any so-called "pressure group" seems to us fairly remarkable. At the most, the self-imposed restriction is likely to be less than in most of the comparable situations involving self-restraint or self-"censorship" which we have listed above (*supra*, pp. 68-69).

On the other hand, the interest in favor of which this minor restraint on freedom of expression would be undertaken can properly be characterized as fundamental and important:—Congress' belief that the preservation of the integrity of the legislative process requires disclosure of supporters of groups deliberately seeking to influence it by affecting or creating mass public opinion. See *supra*, pp. 30-45, 70-75.

There would seem to be no question as to how these opposing interests—the one weak, the other strong—should be balanced, if balancing is to be done. But, unlike its position in *Barsky* v. *United*

States, 167 F. 2d 241, certiorari denied, 334 U. S. 843, the stand of the Court of Appeals here was that the interests served by disclosure were outweighed by CCG's and respondent's personal rights. See R. 201-203. We respectfully submit that the majority of the court below took this position only because it misconceived the "public necessities in this matter" (*Barsky* v. *United States, supra,* at 249): *i.e.,* the nature and history of the problem which Congress felt was before it and which it committed to the Select Committee.[44] In the light of that history and Congress' own knowledge, it cannot be judicially said that the problem is unreal or miniscule. Certainly, the problem was large and important enough to justify the slight contraction in the alleged rights of CCG, its purchasers, and respondent.

4. Thus far, in our discussion of the First Amendment (*supra,* pp. 66-77), we have not separated general legislation requiring disclosure from the Select Committee's *ad hoc* demand for disclosure. We have urged the validity of both, and for the same reasons. But we also believe that the Committee's *ad hoc* demand in the course of inquiry must be upheld even though general legislation compelling disclosure of the names of CCG's larger purchasers would probably be voided or Congress forbidden to

[44] The court remarked that "There is no suggestion that the publication or distribution of these books and documents constitutes any public danger, clear or otherwise, present or otherwise" (R. 203). That is quite true, of course. The suggestion is that *disclosure* of the larger distributors of the books and pamphlets may give Congress needed information, and undisclosed distribution may adversely affect its operations.

compel by continuous inquiry a regular, repeated disclosure of names.

The reason is, as suggested, in Point I (*supra*, pp. 23-24), that a Congressional committee investigating the need for legislation has inquiry power broader than Congress' authority to legislate. It must be able to elicit all the relevant facts bearing on its problem, including those demonstrating that there is no present need or possibility of valid legislation. The instant Select Committee, for instance, had power to discover the names of the purchasers so that it might conclude from its survey that general disclosure legislation was needless and unjustified. But so long as the inquiry was in good faith it would not be until the facts were known that that conclusion could be reached.

This need for accurate first-hand information as a basis for governmental action outweighs such temporary interference with personal rights as may result from the compelled disclosure. As with the witness at a trial whose First Amendment rights may allegedly be restricted by forced disclosure of hitherto private beliefs, actions, or ideas, the personal interests of the witness before a Congressional committee must give way to more important needs of the community as a whole. *Cf.*, R.S. 103, 2 U.S.C. 193, quoted *infra*, p. 80.

C. *There is no interference with protected rights of privacy*

Though the point is not made by the court below, it may be well to discuss briefly, as applied to this

case, some aspects of the so-called "right of privacy" which is often mentioned in comments on Congressional inquiries and disclosure legislation. See, *e.g.*, Nutting, *Freedom of Silence: Constitutional Protection Against Governmental Intrusions in Political Affairs*, (1948) 47 Mich. L. Rev. 181, 219-222.

1. If it were said that, apart from the First Amendment, an undefined right of privacy protected by the Due Process Clause of the Fifth Amendment forbids any disclosure legislation relating to CCG or similar groups, we would urge that, since disclosure here serves a legitimate Congressional end (*supra*, pp. 70-75), the disclosure cases and statutes listed above (*supra*, pp. 59-61) furnish the sufficient answer to claims of privacy. Like the persons affected by the disclosure legislation which has already been upheld, only those would be affected here who have voluntarily come into the public common and become active vendors "in the market place of public opinion." See also *United States* v. *Morton Salt Co.*, 338 U.S. 632, 651-652; *Public Utilities Commission* v. *Pollak*, 343 U.S. 451, 463-466.

2. As for a witness' general right to maintain his privacy before a Congressional Committee, it is now well settled that where the inquiry is legitimate the witness, like a witness in court, cannot refuse to disclose the requested information on the ground that it relates to personal or private affairs. See Point I, *supra*, pp. 25-26. No more than a witness at a trial was respondent free to refuse to produce the records because discovery invaded

his privacy or might bring unfavorable publicity, public disapproval, or even financial reverses. On this point, too, the public interest in full disclosure clearly outbalances the injury to the individual. This Congress has recognized, since 1862, in R.S. 103, 2 U.S.C. 193, which declares that no witness before a Congressional committee is privileged to refuse to testify "upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous." [45]

[45] The Report on Congressional Investigations (dated November 22, 1948) of the Committee on the Bill of Rights of the Association of the Bar of the City of New York states (pp. 3-4):

> There seems to be prevalent a belief, although somewhat vague, that the individual American is endowed with some sort of a 'right of privacy' which exempts him from inquiry into his private affairs. One hears it suggested that such an inquiry violates some protection afforded by the Bill of Rights. We know of no 'right of privacy' or constitutional guarantee which makes a citizen immune to the giving of evidence where an inquiry is being made by a legally constituted Congressional committee engaged in a legitimate investigation—any more than a citizen is immune from having to give relevant testimony in a trial before a court of law. The questions, of course, must be relevant to the subject under investigtion, and the decisions of the Supreme Court already protect the individual from being required to answer questions which are not pertinent to the inquiry. But, assuming that the question is material and relevant to an inquiry in aid of a lawful purpose of Congress, we do not believe that the individual is immune from being required to answer merely because the question delves into his private affairs, his previous utterances or his affiliations, political or otherwise. It is not necessary for the purpose of this report to attempt to predict what the courts may hold with respect to the inquiry into an individual's privately entertained belief, except to say that at all events a court would probably insist that the relevancy of such an inquiry be clearly established and that this would be true only in rather exceptional circumstances.

CONCLUSION

It is therefore respectfully submitted that the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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NOVEMBER 1952.

APPENDIX A

LEGISLATIVE REORGANIZATION ACT OF 1946

1. Title III—Regulation of Lobbying Act (60 Stat. 812, 839; 2 U.S.C. 261-270)

SHORT TITLE

Sec. 301. This title may be cited as the "Federal Regulation of Lobbying Act".

DEFINITIONS

Sec. 302. When used in this title—

(a) The term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

(b) The term "expenditure" includes a payment, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

(c) The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

(d) The term "Clerk" means the Clerk of the House of Representatives of the United States.

(e) The term "legislation" means bills, resolutions, amendments, nominations, nd other matters pending or proposed in either House of Congress, and includes any other matter which may be the subject of action by either House.

DETAILED ACCOUNTS OF CONTRIBUTIONS

Sec. 303. (a) It shall be the duty of every person who shall in any manner solicit or receive a contribution to any organization or fund for the purposes hereinafter designated to keep a detailed and exact accoumt of—

(1) all contributions of any amount or of any value whatsoever;

(2) the name and address of every person making any such contribution of $500 or more and the date thereof;

(3) all expenditures made by or on behalf of such organization or fund; and

(4) the name and address of every person to whom any such expenditure is made and the date thereof.

(b) It shall be the duty of such person to obtain and keep a receipted bill, stating the particulars, for every expenditure of such funds exceeding $10 in amount, and to preserve all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of the filing of the statement containing such items.

RECEIPTS FOR CONTRIBUTIONS

Sec. 304. Every individual who receives a contribution of $500 or more for any of the purposes hereinafter designated shall within five days after receipt thereof rendered to the person or organization for which such contribution was received a detailed account thereof, including the name and

address of the person making such contribution and the date on which received.

STATEMENTS TO BE FILED WITH CLERK OF HOUSE

SEC. 305. (a) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307 shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the day next preceding the date of filing—

(1) the name and address of each person who has made a contribution of $500 or more not mentioned in the preceding report; except that the first report filed pursuant to this title shall contain the name and address of each person who has made any contribution of $500 or more to such person since the effective date of this title;

(2) the total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (1);

(3) the total sum of all contributions made to or for such person during the calendar year;

(4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of $10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;

(5) the total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4);

(6) the total sum of expenditures made by or on behalf of such person during the calendar year.

(b) The statements required to be filed by subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

STATEMENT PRESERVED FOR TWO YEARS

Sec. 306. A statement required by this title to be filed with the Clerk—

(a) shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia, but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by the Clerk of its nonreceipt;

(b) shall be preserved by the Clerk for a period of two years from the date of filing, shall constitute part of the public records of his office, and shall be open to public inspection.

PERSONS TO WHOM APPLICABLE

Sec. 307. The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be

used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

REGISTRATION WITH SECRETARY OF THE SENATE AND CLERK OF THE HOUSE

SEC. 308. (a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what

purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

(b) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record.

Reports and Statements To Be Made Under Oath

Sec. 309. All reports and statements required under this title shall be made under oath, before an officer authorized by law to administer oaths.

Penalties

Sec. 310. (a) Any person who violates any of the provisions of this title, shall, upon conviction, be guilty of a misdemeanor, and shall be punished by a fine of not more than $5,000 or imprisonment for not more than twelve months, or by both such fine and imprisonment.

(b) In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than $10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

Exemption

Sec. 311. The provisions of this title shall not apply to practices or activities regulated by the Federal Corrupt Practices Act nor be construed as repealing any portion of said Federal Corrupt Practices Act.

2. Separability Clause (60 Stat. 812, 814)

Sec. 1(b) *Separability Clause.* If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

APPENDIX B

Partial Bibliography on Legislative Investigations

Books:

Dimock, *Congressional Investigating Committees,* 47 Johns Hopkins Univ. Studies in Hist. and Pol. Science No. 1 (1929).

Eberling, *Congressional Investigations* (1928).

McGeary, *The Developments of Congressional Investigative Power* (1940).

Pepper, *Family Quarrels* (1931).

Rogers, *The American Senate* (1926).

Articles, etc.:

Association of the Bar of the City of New York, Committee on Bill of Rights, *Report on Congressional Investigation* (dated Nov. 22, 1948).

Boudin, *Congressional and Agency Investigations—Their Uses and Abuses,* 35 Va. L. Rev. 143.

Carr, *The Un-American Activities Committee and the Courts,* 11 La. L. Rev. 282.

Congressional Investigations: A Symposium, 18 U. of Chi. L. Rev. No. 3 (Spring 1951), pp. 421 *et seq.*

Coudert, *Congressional Inquisition vs. Individual Liberty,* 15 Va. L. Rev. 537.

Cousens, *The Purposes and Scope of Investigations Under Legislative Authority,* 26 Geo. L. J. 905.

Ehrmann, *The Duty of Disclosure in Parliamentary Investigation: A Comparative,* 11 U. of Chi. L. Rev. 1, 117.

Frankfurter, *Hands Off the Investigations,* 38 New Republic 329, reprinted in 65 Cong. Rec. 9080-2.

Galloway, *The Investigative Function of Congress,* 21 Am. Pol. Sc. Rev. 47.

Galloway, *Investigation, Governmental,* 8 Encyc. Soc. Sci. 251.

Glassie and Cooley, *Congressional Investigations—Salvation in Self-Regulation,* 38 Geo. L. J. 343.

Gose, *The Limits of Congressional Investigating Power,* 10 Wash. L. Rev. 61, 138.

Hamilton, *The Inquisitorial Power of Congress,* 23 A.B.A.J. 511.

Herwitz and Mulligan, *The Legislative Investigating Committee,* 33 Col. L. Rev. 1.

Landis, *Constitutional Limitations on the Congressional Power of Investigation,* 40 Harv. L. Rev. 153.

Loring, *Powers of Congressional Investigation Committees,* 8 Minn. L. Rev. 595.

McGeary, *The Congressional Power of Investigation,* 28 Neb. L. Rev. 516.

Meader, *Limitations on Congressional Investigation,* 47 Mich. L. Rev. 775.

Morgan, *Congressional Investigations and Judicial Review: Kilbourn v. Thompson Revisited*, 37 Calif. L. Rev. 556.

Note, 32 Bost. Univ. L. Rev. 326.

Note, 47 Col. L. Rev. 416.

Note, 33 Corn. L. Q. 565.

Note, 46 Mich. L. Rev. 521.

Note, 22 So. Calif. L. Rev. 464.

Note, 14 U. of Chi. L. Rev. 256.

Note, 17 U. of Cin. L. Rev. 264.

Nutting, *Freedom of Silence: Constitutional Protection Against Governmental Intrusions in Political Affairs*, 47 Mich. L. Rev. 181.

Potts, *Power of Legislative Bodies to Punish for Contempt*, 74 U. of Pa. L. Rev. 691, 780.

Whitridge, *Legislative Inquests*, 1 Pol. Sci. Q. 84.

Wigmore, Comment on *Legislative Power to Compel Testimony*, 19 Ill. L. Rev. 452.

Wyzanski, *Standards for Congressional Investigations*, 3 The Records of the Assoc. of the Bar of the City of N. Y. 93, reprinted in 94 Cong. Rec. A1547.

36 Col. L. Rev. 841.

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